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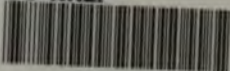
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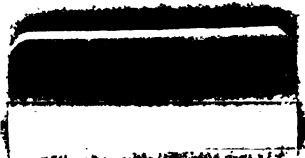
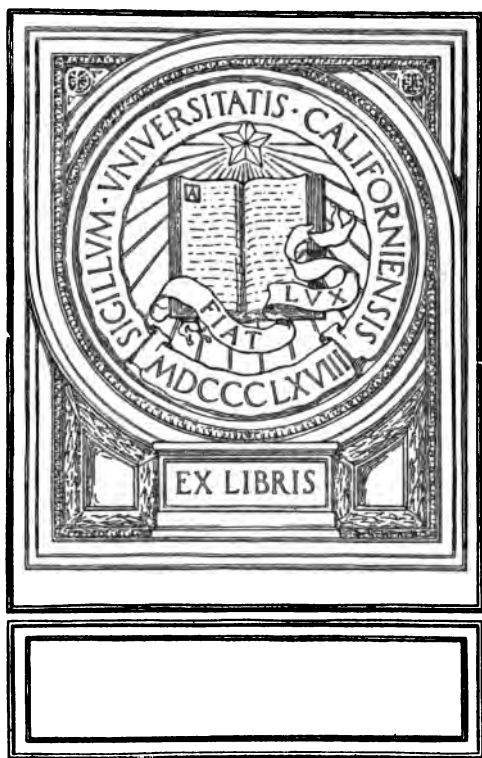
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PANAMA CANAL TOLLS

SYMPOSIUM OF VIEWS PROTESTING AGAINST A SURRENDER OF AMERICAN RIGHTS AND UPHOLDING THE SIDE OF THE UNITED STATES IN THE TOLL CONTROVERSY

A discussion of the Hay-Pauncefote treaty, of
the right of foreign nations to interfere in our
domestic affairs, and of the influences back of
the effort to repeal the sections of the Panama
Canal Act beneficial to American commerce

Extracts from Congressional Record and Public Documents
Compiled by Hon. JOSEPH R. KNOWLAND, of California
1912-1913



WASHINGTON
1913

TO THE
AMERICAN



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PANAMA CANAL TOLLS.

EXTRACTS FROM CONGRESSIONAL RECORD AND
PUBLIC DOCUMENTS.

SYMPOSIUM OF VIEWS PROTESTING AGAINST A SURRENDER OF AMERICAN RIGHTS AND UPHOLDING THE SIDE OF THE UNITED STATES IN THE TOLL CONTROVERSY.

[From the Congressional Record, Feb. 6, 1913.]

DECLARATION IN PLATFORM OF NATIONAL DEMOCRATIC PARTY UNANIMOUSLY APPROVED AT BALTIMORE ON JULY 2, 1912.

We favor the exemption from tolls of American ships engaged in coastwise trade passing through the Panama Canal. We also favor legislation forbidding the use of the Panama Canal by ships owned or controlled by railroad carriers engaged in transportation competitive with the canal.

[From the Congressional Record, Feb. 6, 1913.]

DECLARATION IN PLATFORM OF NATIONAL PROGRESSIVE PARTY UNANIMOUSLY APPROVED IN CHICAGO ON AUGUST 7, 1912.

The Panama Canal, built and paid for by the American people, must be used primarily for their benefit. We demand that the canal shall be so operated as to break transportation monopoly now held and misused by the transcontinental railroads, by maintaining sea competition with them; that ships directly or indirectly owned or controlled by American railroad corporations shall not be permitted to use the canal, and that American ships engaged in coastwise trade shall pay no tolls.

[From the Congressional Record, Feb. 6, 1913.]

EXTRACT FROM LETTER OF THEODORE ROOSEVELT IN OUTLOOK, JANUARY 18, 1913.

I believe that the position of the United States is proper as regards this coastwise traffic. I think that we have the right to free bona fide coastwise traffic from tolls. I think that this does not interfere with the rights of any other nation, because no ships but our own can engage in coastwise traffic, so that there is no discrimination against other ships when we relieve the coastwise traffic from tolls. I believe that the only damage that would be done is the damage to the Canadian Pacific Railway. Moreover, I do not think that it sits well on the representatives of any foreign nation, even upon those of a power with which we are, and I hope and believe will always remain, on such good terms as Great Britain, to make any plea in reference to what we do with our own coastwise traffic, because we are benefiting the whole world by our action at Panama, and are doing this where every dollar of expense is paid by ourselves. In all history I do not believe you can find another instance where as great and expensive a work as the Panama Canal, undertaken not by a private corporation but by a nation, has ever been as generously put at the service of all the nations of mankind.

**EXTRACTS FROM MINORITY REPORT SUBMITTED TO THE HOUSE
ON MARCH 20, 1912, UPHOLDING THE RIGHT OF THE UNITED
STATES TO CONTROL THE PANAMA CANAL.**

VIEWS OF THE MINORITY.

(To accompany H. R. 21969—the Panama Canal bill.)

Firmly convinced that the United States has the right to relieve American ships engaged in the coastwise trade from the payment of toll charges through the Panama Canal, the undersigned members of the Committee on Interstate and Foreign Commerce dissent from the report accompanying House bill 21969 submitted by the majority of the committee.

This bill, in so far as it provides for levying tolls upon vessels engaged in commerce between the States, is entirely new in American history. From the beginning of the Government to the present time, notwithstanding that we have appropriated \$921,098,236.05 for the improvement of rivers and harbors and the construction of canals, exclusive of the Panama Canal, it has never entered into the conception of Congress to erect a tollgate in the path of our domestic trade, for the benefit of which these improvements have been made.

The minority enters an emphatic protest against the abandonment in this bill of our historic policy of free commercial intercourse between the States. This great canal, built for the American people by American money, genius, and enterprise, should be forever a free and untrammelled competing route with transportation by land. We can not emphasize too strongly the elementary proposition that tolls levied upon vessels engaged in commerce between our eastern and western seaboard increase the amount the transcontinental railroads may charge for the same service. If a vessel en route from San Francisco to New York through the canal were required to pay \$10,000 in tolls, the transcontinental railroads would largely be the beneficiaries. This question affects every ton of domestic freight that passes through the canal and every ton that is carried across the country by the railroads.

The talk of "subsidizing" the shipping interests at the expense of the American people is mere sophistry and only befores the issue. The tolls imposed at the canal would be added to the freight and paid by the American people who consume the commodities. We hold this proposition to be fundamental; and viewed in this light, free tolls to our coastwise trade would not be a subsidy to shipowners, but a concession to the American people. Free tolls at the Panama Canal to our coastwise trade would be the same kind of a "subsidy" that was granted to 41,000,000 tons of shipping that passed through the Soo Canal in 1911. It is true that we levy no tolls upon Canadian vessels using the Soo Canal, but that is because American vessels are accorded the same treatment by the Canadian Government at the Welland Canal. By virtue of a reciprocal arrangement we receive our quid pro quo for passing Canadian vessels through the Soo Canal free of charge. We disclaim any antipathy against the railroads, but insist that this initial legislation for the government and management of the Panama Canal shall not take money from the pockets of the American people and give it to the great corporations that have already been munificently treated by the Federal Government.

In a comparatively few instances opposition to free tolls has developed in certain localities in the Middle West, based upon the erroneous assumption that any reductions in freight rates between the Atlantic and Pacific seaboard will give the Pacific, Gulf, and Atlantic coast cities an advantage over the Middle West cities in competing for the trade of the intermountain section of the West. There might be some ground for this assumption were it not for the fact that rail freight rates between the Middle West and the Pacific coast never exceed those between the Atlantic and Pacific seaboard and are frequently lower. Any reduction in rail freight rates forced by sea competition between, say, New York and San Francisco is contemporaneously applied between Chicago, St. Paul, St. Louis, Kansas City, and, in fact, every city of the Middle West on the one hand and every Pacific coast city or town on the other. This always has been so—it always will be so. The selfish interests of the railroads serving the Middle West is the strongest possible guaranty of the perpetuity of this already well-established rate-making system. No road operating between St. Paul and Seattle will permit a lower rail rate to exist between New York and Seattle than exists between St. Paul and Seattle, otherwise St. Paul's trade would be captured by New York.

Therefore if, by reason of free tolls to vessels in the coastwise trade, freight rates between New York and Seattle are \$1 per ton less than they would be if tolls were charged, they will by the same measure be less between St. Paul and Chicago and Omaha and St. Louis and Kansas City on the one hand and Seattle and Portland and San Francisco and Los Angeles and San Diego on the other. It is not for the merchants, manufacturers, producers, and consumers of the Middle West to do other than to heartily favor free tolls. It is to be expected, however, that the railroads serving the Middle West, and for that matter the entire country, will strenuously oppose free tolls and with equal strenuousness advocate the highest tolls possible, the only limit being those charged contemporaneously through Suez. Inasmuch as rates between the entire country east of the Missouri River on the one hand and the intermountain section on the other are based upon the coast-to-coast rates, it is obvious that free tolls would be equally advantageous to this section as to all other sections of the country. Free tolls can not but minimize rail freight rates on all the manufactures of the Atlantic seaboard and the Middle West, the products of the great Mississippi Valley, and those of the Pacific coast, to the ultimate advantage of the producers and consumers throughout the entire country. Nor are reductions in rail rates the only advantages which the people of the great interior of our country are to reap from free tolls. They have even a more direct interest.

Much of the commerce of the great Mississippi Valley will flow down the rivers which drain it to the Gulf and thence through the canal to the Pacific coast. Likewise Pacific coast products will, under free tolls, to a large extent eventually be distributed throughout the Middle West via her waterways. The completion of the Lakes to Gulf waterway project will make it not alone possible but practicable to exchange Pacific coast lumber for Lake Superior ore without either commodity touching the floor of a freight car. Every burden placed upon traffic through the canal impairs its usefulness as a competitive route and decreases its benefits to the American people.

* * * * *

While disclaiming any intention to interpret the Hay-Pauncefote treaty in favor of foreign shipping interests, the majority report proceeds to call attention to the rejection of an amendment offered in the Senate when the treaty was pending reserving to the United States the right to discriminate in favor of vessels of its own citizens engaged in the coastwise trade. It is a matter of record that this amendment, offered by Senator Bard, of California, was rejected by a vote of 27 yeas and 43 nays. On the same day, however, an amendment was offered (see S. Doc. 85, 57th Cong., 1st sess.) reserving the right to the United States to protect said canal in any way it might deem proper. This amendment was rejected on roll call—yeas 27, nays 44—and this was the fate of several other amendments similarly reserving to the United States the right to fortify the canal. It is unnecessary to call attention to the fact that fortifications are now being constructed. With further reference to the Bard amendment we have been granted authority to quote from a letter recently written by Senator Bard in the course of which he states:

When my amendment was under consideration *it was generally conceded* [the italics are his] by Senators that even without that specific provision the rules of the treaty would not prevent our Government from treating the canal as part of our coast line and consequently could not be construed as a restriction of our interstate commerce, forbidding the discrimination in charges for tolls in favor of our coastwise trade, and this conviction contributed to the defeat of the amendment.

We contend that our right to favor our own shipping in the matter of canal tolls can not be seriously questioned. The minority is not forced to offer profuse apologies for its position. The message of President Taft sent to Congress in December (H. Doc. 343, 62d Cong., 2d sess.) has the true American ring, and clearly states the case. These are the President's words:

I am confident that the United States has the power to relieve from the payment of tolls any part of our shipping that Congress deems wise. We own the canal. It was our money that built it. We have the right to charge tolls for its use. Those tolls must be the same to everyone, but when we are dealing with our own ships, the practice of many Governments of subsidizing their own merchant vessels is so well established in general that a subsidy equal to the tolls, as equivalent remission of tolls, can not be held to be a discrimination in the use of the canal. The practice in the Suez Canal makes this clear.

The minority disagrees entirely with the view of the majority that the Hay-Pauncefote treaty makes it impossible for Congress to prefer our own vessels engaged in the coastwise trade. That portion of article 3 of the treaty which

it is claimed would be violated by preferring our coastwise trade reads as follows:

The United States adopts as the basis of the neutralization of such ship canal the following rules, substantially as embodied in the convention of Constantinople, signed the 28th of October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against such nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

It is manifest, from the reading of the treaty, that its purpose was to prevent discrimination against other nations. That free tolls to our coastwise vessels would not discriminate against the vessels of other countries becomes apparent when we reflect that under our navigation laws foreign vessels are prohibited from engaging in our coastwise trade. That being true, it is of no concern to foreign nations, their citizens or subjects, what treatment we accord to our coastwise trade.

Foreign nations have not considered that they were violating the rules for the neutralization of the Suez Canal by rebating tolls to vessels flying their own flag. The contemporaneous construction that the powers signatory to the convention of Constantinople have given that instrument supports the position of the minority that we have a perfect right under the Hay-Pauncefote treaty to favor our domestic shipping; and if we have the right to collect the tolls at the canal and repay them, we certainly have the right to remit them in the first instance. It is unnecessary to resort to a device or subterfuge in order to do indirectly what we have a right to do directly.

It will be observed that the treaty provides that "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality," yet this bill expressly reserves the right of the United States Government to pass its own ships of war through the canal without the payment of any tolls. We confess our inability to see the logic or consistency of the position of the majority that free tolls to ships of commerce would be a violation of the treaty, but that free tolls to ships of war would not be a violation of the treaty. The majority seek to justify the right to exempt war vessels of the United States from the payment of tolls under that clause of the treaty which provides that "the United States enjoys all the rights incident to construction as well as the exclusive right of providing for the regulation and management of the canal."

Under any fair construction of the treaty, however, this language must be considered in connection with the rules that are adopted in the treaty for the regulation and management of the canal. In other words, under the treaty the United States enjoys all the rights incident to the construction as well as the exclusive right of providing for the regulation and management of the canal, subject, however, to the rules therein provided for its regulation and management. These rules, as we have already seen, provide that the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality. If this language was intended to prevent preferring our own vessels, it must apply equally to both vessels of commerce and vessels of war. Such a construction is inconsistent with the very purpose of the canal, which was conceived primarily as a military necessity.

The majority dismissed the case of *Olsen v. Smith* (195 U. S., 332) with the remark that it has no application to the situation with which we are dealing, notwithstanding an examination of the case would have disclosed that on the question of discrimination it is on all fours with the subject we are now considering. In that case the treaty with Great Britain provided that "no higher or other duties or charges shall be imposed in any ports of the United States on British vessels than those payable in the same ports by vessels of the United States."

The court held that this treaty was not violated by either the Texas statute or the Revised Statutes of the United States, section 4444, exempting coastwise steam vessels from the payment of pilotage charges. In that connection, speaking for the court, Mr. Justice White, now Chief Justice, said:

Nor is there merit in the contention that as the vessel in question was a British vessel, coming from a foreign port, the State laws concerning pilotage are in conflict with the treaty between Great Britain and the United States, providing that "no higher or other duties or charges shall be imposed in any ports of the United States on British vessels

than those payable in the same ports by vessels of the United States." Neither the exemption of coastwise steam vessels from pilotage resulting from the law of the United States nor any lawful exemption of coastwise vessels created by the State law concerns vessels in the foreign trade, and, therefore, any such exemptions do not operate to produce a discrimination against British vessels engaged in foreign trade and in favor of the vessels of the United States in such trade. In substance, the proposition but asserts that because by the law of the United States steam vessels in the coastwise trade have been exempt from pilotage regulations, therefore there is no power to subject vessels in foreign trade to pilotage regulations, even though such regulations apply without discrimination to all vessels engaged in such foreign trade, whether domestic or foreign.

If a treaty with Great Britain providing that "no higher or other duties or charges shall be imposed in any ports of the United States on British vessels than those payable in the same ports by vessels of the United States" is not violated by an exemption in favor of our own vessels engaged in coastwise trade from payment of pilotage charges, it must necessarily follow that the Hay-Pauncefote treaty would not be violated by a similar exemption of our coastwise vessels from the payment of tolls at the Panama Canal.

The Panama Canal is being built on territory which was purchased by the Government of the United States. We will expend in its construction upward of \$400,000,000, and are obligated by treaty to pay the Republic of Panama in perpetuity the sum of \$250,000 annually. We occupy the position of sovereign proprietor of the canal and the Canal Zone, a relation that none of the nine powers signatory to the convention of Constantinople sustained with reference to the Suez Canal. The Hay-Pauncefote treaty should be construed in the light of these facts, and when so construed the minority can not escape the conclusion that in signing, ratifying, and proclaiming this treaty to the world we were merely agreeing to the terms and conditions upon which the United States, the sovereign owner of the canal, would permit its use by the other nations of the world, its citizens or subjects.

* * * * *

The minority believe in the religious observance of our treaty obligations as essential to the maintenance of our own self-respect and the confidence and friendly regard of other nations; but we refuse to assent to the mere suggestion, to say nothing of the bold declaration, that by the Hay-Pauncefote treaty we have, without consideration, bartered away to a foreign nation the constitutional power of Congress to regulate commerce between the United States and encourage the upbuilding and growth of our domestic shipping.

Since 1884 we have consistently adhered to a policy enunciated in the river and harbor act of that year, section 4 of which provided:

No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredge, or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation now belonging to the United States or that may be hereafter acquired or constructed.

The Secretary of the Treasury has recently sent to the Senate, in response to a resolution from that body, a letter transmitting information relating to expenditures for rivers and harbors from the establishment of the Government to the close of the fiscal year ending June 30, 1911. (See S. Doc. No. 382, 62d Cong., 2d sess.) This statement shows that the total expenditures upon rivers, harbors, and canals (exclusive of the Panama Canal) has reached the enormous total of \$627,098,236.05. The whole country has borne the burden, and no one has suggested that it be placed solely upon American shipping. It has not been seriously urged that the cost of maintenance even be imposed upon commerce. For instance, \$121,142,554.41 has been spent by the Government upon the Mississippi River, and it is now proposed to expend a greater sum to provide a deep waterway from the Lakes to the Gulf. Upon the Missouri River has been expended \$11,425,056.90, while the Ohio River has been aided by the Government to the extent of \$23,548,338.15. While it might be argued that the people of the Atlantic and Pacific coasts are receiving no direct benefit from these river improvements, they are not urging that those States and interests directly tributary to the Mississippi, Ohio, and Missouri Rivers be singled out to bear the burden of these enormous expenditures.

* * * * *

In answer to those who hold that the Government should at least obtain a revenue from the canal sufficient to cover the operating expenses, which they fear would be impossible if we remitted tolls to American ships in the coastwise trade, we will show from the evidence that tolls can be remitted and a revenue obtained with a toll of \$1.20 per net register ton upon ships other than

those engaged in interstate commerce sufficient to pay double the expense of operation, maintenance, sanitation, and civil government.

* * * * *

At the hearings before the committee, Prof. Emory R. Johnson, employed by the Government especially to make traffic computations, and whose estimates are generally regarded as very conservative, reported that the net register tonnage of vessels that might have advantageously used a Panama Canal in 1909-10 was 8,328,029 net tons. We quote the statement of Prof. Johnson, found on page 698 of the printed committee hearings:

It was found in 1899-1900 that 5,000,000 tons net register of shipping was then available for the use of the Panama Canal. The increase during the 11 years ending June 30, 1910, was 66½ per cent, or at the rate of 59 per cent per decade. That rate of increase, projected to 1914-15, would mean an increase of 26.8 per cent during the five years following 1910, which would bring the total of 8,328,000 to 10,500,000 tons at the time of the opening of the canal.

Of this total it is estimated that but 1,160,000 net register tons will be coast-to-coast traffic. (See statement Prof. Johnson, committee hearings, p. 705.) We have shown that since 1899 all the estimates of possible canal traffic have been understatements, and in our opinion this is due to the fact that few have anticipated the wonderful growth in ocean steam navigation. When the Suez Canal was opened in 1869 the world's shipping comprised 16,042,498 net tons sail vessels, and only 2,793,432 net tons steam vessels. In 1911 the world's tonnage comprised 22,338,549 net tons steam vessels, and only 6,152,977 tons sail vessels. The canal, as constructed, can handle, according to the estimate of Col. Goethals (committee hearings, p. 413), 80,000,000 tons a year.

No estimate has been or can be prepared which will give its business for 1915 at less than 8,000,000 net tons, and we are inclined to the view that Prof. Johnson's estimate of 10,500,000 net register tons is very conservative. * * *

The majority report (p. 4) states that "it will require \$4,000,000 or \$5,000,000 a year to maintain and operate the canal and administer its adjuncts."

The careful and detailed estimates of Col. Goethals show that the total annual cost of the operation and maintenance of the canal, including the cost of sanitation and civil government, will not exceed \$4,000,000, and that it is hoped to realize a profit from the sale of supplies, etc., to bring this down to \$3,500,000. (See committee hearings, pp. 410, 411, 415, and 417.) Analyzing the figures of Prof. Johnson, we find that a toll of \$1.20 per net register ton would bring in a total annual revenue during the first year, exclusive of passenger tolls, of \$12,800,000. Subtracting the interstate commerce traffic (American coastwise), which Prof. Johnson estimates at 1,160,000 tons, we would still have an annual revenue of \$11,208,000, more than double the operating expenses, with the tonnage annually increasing.

We resent the charge contained on page 6 of the majority report that "this small shipping interest has secured recommendations from some trade organizations in various coast cities of the country on the erroneous theory that shippers would secure the benefits of the remitted tolls." These "trade organizations," which are spoken of so sneeringly, are not all located in coast cities. For instance, the Lakes-to-the-Gulf Deep Waterways Association, which unanimously passed the following resolutions, is not a coast organization:

The policy of free waterways is fundamental with the American people, and hence this association declares that this principle should be extended to our coastwise trade through the Panama Canal.

The 1,200 delegates attending the National Rivers and Harbors Congress, which convened in Washington last December, were not influenced by the "small shipping interest." We might likewise mention the Boston Chamber of Commerce, the National Board of Trade, the Navy League of the United States, the Philadelphia Chamber of Commerce, the New Orleans Progressive Union, the New York Board of Trade and Transportation, the Merchants' Association of New York, the Maritime Association of the Port of New York, and various other representative bodies, these resolutions being appended as a part of this report.

We contend that no better opportunity was ever offered for the development of an American merchant marine and the establishment of a fleet of naval auxiliaries, which would be available in time of war.

There is no doubt that the founders of the Government and the framers of the Constitution intended to provide for free and unrestricted commerce between the States. Certain it is that such has been our national policy from

the beginning. It would be a cause for sincere regret to all lovers of this ancient institution if now, at the threshold of the opening of this great canal, fraught with such wonderful commercial possibilities to the American people, we should depart from the path that has so long been pursued.

ROBERT F. BROUSSARD.
HENRY M. GOLDFOGLE.
FRANK E. DOREMUS.
JOSEPH R. KNOWLAND.
WILLIAM M. CALDER.

**FROM SPEECH OF HON. JAMES A. O'GORMAN, OF NEW YORK, IN
THE SENATE OF THE UNITED STATES JANUARY 22, 1913.**

Mr. O'GORMAN. Mr. President, as I understand the bill which is being discussed, it provides for the repeal of a clause in the Panama Canal law exempting coastwise vessels from the payment of tolls, and, in the alternative, recommends that the disputed question of interpretation and construction of the Hay-Pauncefote treaty be referred to arbitration. I am unalterably opposed to both propositions.

It has been stated that the legislation enacted at the last session was ill-advised and hasty and without proper consideration. I am sure when that statement was made to the Senate the Senators who heard the declaration were surprised, because it is within the knowledge of every Member of the body that the bill enacted at the last session for the regulation of the Panama Canal received the consideration of the Inter-oceanic Canal Committee for many months and was the subject of discussion on the floor of the Senate from time to time for perhaps four or five weeks. Many Senators participated in the discussion; and after very thoughtful consideration of the merits of the bill, with the same objections then urged that we have heard in the last day or two, the Senate adopted the existing law by a vote of 45 in its favor against 15 in opposition.

The great remedy which was sought to be accomplished by that law receives very little attention and was scarcely alluded to by those who opposed its passage. It was sought by the proper use of the Panama Canal to place a wholesome restraint upon the transcontinental railroads in the imposition of their charges. It is common knowledge that for many years the transcontinental railroads looked with disfavor upon the building of a Panama Canal, because those interested in the railroads knew that with the opening of the Panama Canal cheap transportation by water would require the railroads to reduce their rates and would deprive them of the monopoly which they sought to obtain.

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You rarely hear in the discussion of the Panama Canal bill any reference to its railroad features. I concede that the provisions which seek to exclude railroads from the use of the waterways of the country are drastic, but I insist that they are necessary if the people of the country are to be saved from the domination of great monopolies.

We provided in the bill that our coastwise ships should be permitted to use the canal free. We were induced to this course by two considerations: First, to encourage our coastwise shipping; and, second and more important, to secure the cheapest possible transportation by water. Cheap water transportation will compel the competing transcontinental railroads to maintain reasonable rates. The main purpose of the legislation was to reduce the cost of domestic transportation. This clearly presents a question of domestic policy, having no relation to international obligations.

Of course, we hear it said "You have violated the treaty with Great Britain," and we are told from time to time that we must maintain our reputation for national integrity with the countries of the world. But we have not violated the treaty by exempting our coastwise vessels. England, under a similar act passed in 1815 guaranteeing equality to the ships of the United States in the harbors of Great Britain, has for 98 years discriminated in favor of her local shipping. We have some people in this country who are more English than the English themselves in the consideration of our treaty relations.

We are told that possibly a painful impression will be made. I am sure that a painful impression will be made abroad if we surrender one of the

most essential attributes of sovereignty. We can never permit a foreign power to intrude upon us its views affecting our domestic policy. If we yield once, further encroachments will be made upon our integrity as a Nation.

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It has been stated that during the progress of the negotiations preceding the adoption of the Hay-Pauncefote treaty Senator Bard proposed in substance the adoption of a declaration that the provisions under discussion were not intended to affect the vessels of the United States. It is said that was voted down at the time, and that therefore it is a concession that no vessels of the United States should be exempted from the provisions of the Hay-Pauncefote treaty. But I ask whether it is not more probable that the reason the suggested provision was voted down was that many of the lawyers in this body deemed it wholly unnecessary; that the treaty as it was originally proposed conferred that right upon the United States, and needed no modification in that regard?

We are reminded that we have been the apostles of the peace movement; that we would be untrue to our traditions if we did not permit this question to be disposed of by an arbitration court. In some quarters it is forgotten that a year ago, after long discussion, the Senate refused to enter into a treaty with any foreign power by which every controversy was to be settled by arbitration. We have numerous arbitration treaties now, but every treaty excludes from submission to arbitration three classes of questions—those affecting our national honor, our vital interests, and the rights of third parties. And we have solemnly refused to go further in support of arbitration policies.

The question confronting us is, Shall we permit foreign Governments to dictate to the United States respecting our domestic policies? If our right to pursue a domestic policy be challenged by a foreign power, our national integrity is impeached if we yield to such an influence.

Senators, I can conceive of no question more vitally affecting our national honor and integrity than a question such as is proposed to us now—that a domestic policy inaugurated by the Congress of the United States for the benefit of the American people must first secure the approval of a foreign nation. * * *

Can you imagine what would happen if our positions were reversed and if we presumed to dictate to a foreign power what its domestic policy should be, and if when the foreign power refused to yield to our dictation we should say, "Well, this is a proper case for an international tribunal"?

As President Cleveland said on an historic occasion, "There is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor, beneath which are shielded and defended a people's safety and greatness."

It must not be forgotten that you can never have an international tribunal where the representatives of a foreign power are in sympathy with the Monroe doctrine. Foreign powers tolerate the Monroe doctrine, but they do not recognize it as international law.

If Great Britain had expended almost half a billion dollars in a public enterprise affecting the people of that country, what would be her answer if the United States undertook to impose undue restraint upon Great Britain's use of her own property? Nor should the circumstance be overlooked that in this legislation the very thing of which complaint is made is something which Great Britain concededly can do. Yet she would refuse the like privilege to us, notwithstanding the fact that we built the canal and that the people of the United States contributed over \$400,000,000 for that purpose.

England and every European country for years have been subsidizing their vessels going through the Suez Canal. It is fair to suppose that England and other European powers will continue to subsidize their vessels going through the Panama Canal in their struggle for the commerce of the world. While there is nothing in the treaty which would prevent England or France or Germany or Spain subsidizing their vessels, Great Britain would impose certain restraints upon us. That, at least, was the attitude of the British Government in the first message which was received in June or July of last year. I understand the British Government has receded somewhat from the position it then took; that in a measure it now recognizes our right to subsidize our vessels and to remit the tolls, but insists that we must collect them in the first

instance; and because we refuse to do that, the suggestion is made that England is discriminated against and that we must have an arbitration.

There is no principle better established than that the law never requires the performance of an idle ceremony, because an idle ceremony is a useless and unsubstantial performance. Yet under one view advanced by Great Britain she would insist that we must collect the toll as our vessel passes through, even though we immediately return it.

Of course, the claim was made at first, in the general discussion last July or August, that we could not under any circumstances return any part of the toll, but I believe that Great Britain herself has receded from that position.

I do not intend, Mr. President, in view of the time I devoted to a discussion of this question on a former occasion, to delay the Senate further than to insist that we have passed a wholesome law, a law that will confer lasting benefits upon the people of the United States, and that we would, indeed, create a painful impression abroad if this mighty Nation should surrender the control of its domestic policies at the suggestion of a foreign power. That we never can do and maintain unimpaired the prestige and the honor and the glory of the Republic.

FROM SPEECH OF HON. JAMES R. MANN, OF ILLINOIS, IN THE HOUSE OF REPRESENTATIVES, JANUARY 28, 1913.

Mr. MANN. Mr. Chairman, nearly every day now we read of some article or some speech attacking the provision in the Panama Canal bill which Congress passed last summer in regard to the question of tolls, and particularly that portion of the law which exempted coastwise vessels from the payment of tolls. I do not propose to take very much time on the subject. It seems to me there is a concerted effort being made to discredit the action of Congress. Whether that effort proceeds in part from the activity of the transcontinental railways whose rates of fare are likely, or at least liable, to be affected seriously by the reduction of the cost of carriage by water I do not undertake at this time to say, but I read the other day a published statement attempting to discredit the action of Congress by the assumption that when that bill was under consideration in the House and in the Senate there were no Members present to speak of, and those who were here were worn out and too tired to think.

I quote some language from this publication, as follows:

We must all realize as we look back that when that provision was adopted the Members of both Houses were much exhausted; we were weary physically and mentally. Such discussion as there was was to empty seats. In neither House of Congress during the period that this provision was under discussion could there be found more than a scant dozen or two of Members.

It is unnecessary in the House, so far as the membership of the House is concerned, to state that that statement is without foundation, because we all remember that in the discussion of the Panama Canal bill, and particularly of the Doremus amendment or substitute which was finally agreed to, the membership of the House was quite generally present; and I have seldom seen in my service in the House as large a membership of the House present when any discussion was being carried on.

But the statement that only a scant dozen or two Members of the House who were worn out is an assumption that the action of the House was without proper consideration, and is a reflection not only upon the House but the action which the House took.

The Doremus amendment or substitute for section 5 of the Panama Canal bill was, by consent of the House, printed in the Record of May 18. It was disposed of in Committee of the Whole House on the state of the Union on May 21. It was disposed of in the House itself on May 23; and May, by the way, was before the membership of the House was tired out, if they were tired out at all, which I did not observe during the session.

Let me give a few votes which were taken in Committee of the Whole to show whether there were only a scant dozen or two Members of the House present during the discussion.

On the Adamson committee amendment there was a division, and the ayes were 83 and the noes were 43.

On the Adamson amendment to the Goldfogle amendment, on the same section, the ayes were 52 and the noes were 63.

On the Sims amendment to the Goldfogle amendment the ayes were 44 and the noes were 66.

On the Goldfogle amendment itself, on a division, the ayes were 33 and the noes were 80.

On the Good amendment to the Doremus substitute the ayes were 24 and the noes were 99.

On the Doremus substitute, on a division, the ayes were 91 and the noes were 91; and on tellers being ordered, the ayes were 100 and the noes were 90.

On the final vote in the House the ayes were 147 and the noes were 128, "present" 8.

Mr. Chairman, I throw this into the Record because I am somewhat tired at some of the statements that are being made by extremely high authority for the purpose of making the country believe that that provision in the Panama Canal bill was without consideration by the House, and that action was taken in the absence of Members of the House. While I shall not quote the record in the Senate, it would bear analysis very much to the same effect.

But, Mr. Chairman, we are told that we were wrong in the action that we took; that the Panama Canal act should be submitted to some form of arbitration. The Hay-Pauncefote treaty is given as the basis for the claim that we do not have the authority to exempt our coastwise trade from the payment of tolls through this canal, and that claim is based upon paragraph 1, article 3, of the Hay-Pauncefote treaty. That paragraph reads:

The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

Paragraph 3 of the same article provides:

Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary, and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Paragraph 4 of the same article provides:

No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

Paragraph 5 of the same article provides:

The provisions of this article shall apply to waters adjacent to the canal within 3 miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than 24 hours at any time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within 24 hours from the departure of a vessel of war of the other belligerent.

Paragraph 1 reads:

The canal shall be free and open to the vessels of commerce and war of all nations—

And the claim is made that that puts us upon the same terms precisely as any other nation. If that be true as to merchant marine, it is also true as to vessels of war. There is no distinction in the treaty in that paragraph between war vessels and merchant vessels. If we have no authority under the provisions of this treaty to give preference to our merchant marine, then we have no authority to give preference to our war vessels; and if this treaty applies to our merchant marine, it also applies to the war vessels; and if it applies to the war vessels, if we happen to be at war with any country, then we can not keep one of our war vessels anywhere within 3 miles of either end of the canal for more than 24 hours except in case of distress, and in case of distress the vessel must depart as soon as possible. Do we propose to submit to arbitration the question of whether in time of war with some other country we can maintain one of our warships within 3 miles of either end of the canal? Yet it is perfectly plain that if we can give no preference to the merchant marine we have no authority to keep a war vessel, in time of war with any other country, within 3 miles of either end of the canal.

Mr. Chairman, to a certain extent we gave construction to the Hay-Pauncefote treaty. Shortly after the Hay-Pauncefote treaty we negotiated a treaty with the Republic of Colombia. There is no exception in the Hay-Pauncefote treaty

as to Colombia, and in that treaty which we negotiated with Colombia, though it never was ratified by the Republic of Colombia, it is provided in article 17:

The Government of Colombia shall have the right to transport over the canal its vessels, troops, and munitions of war at all times without paying charges of any kind.

If the provisions of the treaty apply to vessels of all nations, including the United States, they must also apply to the Republic of Colombia, and yet immediately after we had negotiated the Hay-Pauncefote treaty we negotiated this treaty with Colombia. Again, we negotiated a treaty with the Republic of Panama, in which we provided, in article 19—

That the Government of the Republic of Panama shall have the right to transport over the canal its vessels and its troops and munitions of war, in such vessels at all times, without paying charges of any kind.

That treaty is in force; but that is not the only treaty that we negotiated. So distinguished a man as the Hon. Elihu Root, when he was Secretary of State, negotiated a treaty with the Republic of Panama, and another with the Republic of Colombia, and in the treaty with the Republic of Colombia, negotiated by Secretary of State Elihu Root, it was provided:

The Republic of Colombia shall have liberty at all times to convey through the ship canal now in course of construction by the United States across the Isthmus of Panama the troops, materials for war, and ships of war of the Republic of Colombia without paying any duty to the United States, even in the case of an international war between Colombia and another country.

Yet it is reported that certain gentlemen of high authority have recently declared that under the Hay-Pauncefote treaty we have no right to make any discrimination in favor of ourselves, much less the Republic of Colombia. While it is true that this treaty is not in effect, because it was not ratified by the Republic of Colombia, yet it was negotiated by our Secretary of State and ratified and approved by the Senate of the United States. [Applause.] It is not our fault that it is not existing law as a treaty.

Mr. LONGWORTH. Mr. Chairman, was any protest made by any foreign nation at the time of the negotiation of any of these treaties to which the gentleman has referred?

Mr. MANN. There was no protest by any foreign nation at the time. I do not think that any foreign nation ever dreamed that there was no authority on the part of the United States to grant the preference which we have granted until after the transcontinental railroads got busy. [Applause.]

THE RIGHT OF THE UNITED STATES TO EXEMPT COASTWISE SHIPPING FROM THE PAYMENT OF TOLLS. INTERPRETATION GIVEN TO HAY-PAUNCEFOTE TREATY BY SENATORS PRESENT WHEN INSTRUMENT WAS PENDING BEFORE THE UNITED STATES SENATE AND THE BARD AMENDMENT WAS OFFERED.

[From Congressional Record, July 17, 1912.]

Mr. LODGE. Mr. President, some time ago I started to say something in regard to the question of tolls charged on vessels passing through the Panama Canal, which was under discussion here the other afternoon when I was unfortunately absent. I now renew the attempt. The question of canal tolls has arisen in connection with representations made by the Government of Great Britain in regard to our rights in fixing tolls. It so happened that I was in London when the second Hay-Pauncefote treaty was made, and, although the draft was sent from this country, that treaty was really made in London and should properly be called the Lansdowne-Choate treaty. I mention this merely to show that I had some familiarity with the formulation as well as the ratification of that treaty. When the treaty was submitted by the President to the Senate it so happened that I had charge of it and reported it to the Senate.

The second Hay-Pauncefote treaty, as Senators will remember, embodied in substance the amendments which the Senate had made to the first Hay-Pauncefote treaty. England had refused to accept those amendments and then the second treaty was made embodying in principle all for which the Senate had contended.

When I reported that treaty my own impression was that it left the United States in complete control of the tolls upon its own vessels. I did not suppose

then that there was any limitation put upon our right to charge such tolls as we pleased upon our own vessels, or that we were included in the phrase "all nations."

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Mr. PAGE. But the point I wish to raise, and especially to call the attention of the Senator from New York to, is that at the time the amendment was being considered Mr. Bard—who, I think, was then a Senator from California—moved to strike out article 3 and substitute the following:

ART. III. The United States reserves the right in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in the coastwise trade.

This amendment, after discussion before the Senate at that time, was voted down by a vote of 43 to 27. In the discussion, if I remember correctly, it appeared that if we had not done this we could not have made the treaty with Great Britain at that time.

Mr. BRANDEGEE. I do not desire to intrude upon the Senator's time, for I know he is in a hurry. But I intended, at the close of the speech of the Senator from North Dakota [Mr. McCUMBER], to call the attention of the senior Senator from Georgia to page 4 of the views of the minority in the House report on the House bill, where the following is stated:

With further reference to the Bard amendment, we have been granted authority to quote from a letter recently written by Senator Bard, in the course of which he states: "When my amendment was under consideration it was generally conceded by Senators that even without that specific provision the rules of the treaty would not prevent our Government from treating the canal as part of our coast line, and consequently could not be construed as a restriction of our interstate commerce, forbidding the discrimination in charges for tolls in favor of our coastwise trade, and this conviction contributed to the defeat of the amendment."

He states there that "it was generally conceded by Senators that even without that specific provision the rules of the treaty would not prevent our Government from treating the canal as part of our coast line."

Mr. O'GORMAN. That is in accord with the recollection of the Senator from Massachusetts.

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Mr. WORKS. The Senator from Connecticut has anticipated what I was about to say by reading from the records a statement made by Senator Bard with respect to his amendment and the reason why it was voted down.

I simply wish to say that I have in my hand the original letter of Senator Bard making that statement—that the reason for voting down his amendment was that it was generally regarded by the Senate as unnecessary, and that that construction should be placed upon the treaty irrespective of any amendment of that kind.

Mr. CLAPP. Will the Senator yield to me for a moment?

Mr. O'GORMAN. Yes.

Mr. CLAPP. In answer to the suggestions of the Senator from Vermont [Mr. PAGE], I will say that I think it was quite generally understood then that the reason for voting down the proposition to authorize the fortification in express terms was that under the treaty we had the right to fortify without that particular provision. I know I was here at the time, although I do not recall all of the speeches. But while some of us voted insisting in some instances that these things should be explicit and in others voting with the majority upon the ground that they were covered anyhow, I believe, both with reference to the coastwise trade and especially with reference to the question of fortification, that many of the votes cast against those express provisions were cast upon the theory that without them we nevertheless had the right to do them.

Mr. O'GORMAN. That the provisions were unnecessary?

Mr. CLAPP. Yes; that they were unnecessary.

[From the Congressional Record, July 20, 1912.]

Mr. LODGE. While I am on my feet, if the Senator will allow me, there is one other thing I should like to say. I said in my remarks a few days ago that my personal view was that we had the right to exempt American vessels from tolls. I did not go into the matter. I took a somewhat active part in the two Hay-Pauncefote treaties, as they are called. I voted against the Bard amendment. I voted against it in the belief that it was unnecessary; that the

right to fix tolls, if we built the canal or it was built under our auspices, was undoubted. I know that was the view taken by the then Senator from Minnesota, Mr. Davis, who was at that time chairman of the committee. I certainly so stated on the floor. * * * I had that same view in regard to this treaty. I was familiar with the work that was done upon it in London at the time when it was concluded there and finally agreed to, and I was very familiar with it here. Although, as the Senator from Georgia correctly said, the question was not raised at that time, I personally have never had any doubt that the matter of fixing the tolls must necessarily be within our jurisdiction; and when I referred to our going to The Hague as useless I did not mean because our case was not a good one. I meant because in the nature of things we could by no possibility have a disinterested tribunal at The Hague. It would be for the interest of every other nation involved to prevent our fixing the tolls according to our own wishes.

Mr. POMERENE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from South Carolina yield to the Senator from Ohio?

Mr. SMITH of South Carolina. I yield.

Mr. POMERENE. The Senator from Massachusetts has just expressed a reason for his vote against what was known as the Bard amendment. Can the Senator inform us as to whether that was the general sentiment prevailing at that time among the Senators?

Mr. LODGE. I can only say, Mr. President, that that was the view of the chairman of the Committee on Foreign Relations, and it was my view; and, while I may be mistaken, I think on that vote the majority of the Senate followed the Committee on Foreign Relations.

Mr. SMITH of South Carolina. As I understand, the vote was something like 27 to 43.

Mr. LODGE. Yes.

Mr. SMITH of South Carolina. The question of the Bard amendment, to which the Senator refers, was brought up; and on account of its being in executive session, and the debates not being available, I was unable to find any record showing what was the sentiment in that respect.

Mr. LODGE. There is no record that will show that, of course; but I know that was my opinion and the opinion of the chairman of the Committee on Foreign Relations at the time.

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[From the Congressional Record, Aug. 6, 1912.]

Mr. PERKINS. I wish to state that Senator Davis, of Minnesota, was at that time chairman of the Committee on Foreign Relations. He was, as is conceded by all, an authority on international law, and took the view stated by the Senator from New York and that stated by the Senator from Washington. There is no question about it, that the rules we did make were to govern other nations than ourselves.

Mr. JONES. Mr. President, it seems to me it would be a great reflection upon the intelligence and patriotism of Senators who voted against those amendments to accept any different construction.

FROM SPEECH OF HON. HOKE SMITH, OF GEORGIA, IN THE SENATE OF THE UNITED STATES AUGUST 7, 1912.

Mr. SMITH of Georgia.

I think we may justly insist—I doubt whether it would be successfully controverted—that so far as our coastwise vessels are concerned this treaty does not apply to them. Indeed, in the communication from the Attorney General embodying the views brought to our attention by Great Britain it is stated that upon that subject with proper regulations it is probable that no question by Great Britain would be made. Now, fortifying that view, one that we can logically deduce from article 3, section 1, and the attitude of Great Britain upon it with the decision of the Supreme Court of the United States in the Galveston case, in which they held in effect that language of this kind was not applicable to coastwise vessels, that it was no discrimination under language practically similar to the language found in this treaty to extend privileges to

coastwise vessels that were not extended to foreign vessels, we can sustain the provision freeing coastwise vessels from tolls.

That decision squarely sustains the position that the treaty does not apply to coastwise vessels.

I do not express an opinion as to its application to foreign vessels. * * * I think, however, we are justified in the conclusion, especially in view of the further fact that nearly every nation handles its coastwise business exclusively in vessels of its own, that this treaty did not mean to apply to coastwise vessels. The language used expresses no discrimination as to nations; it expresses no discrimination as to English vessels or French vessels or German vessels; it simply declares that the coastwise vessels may pass through the canal free. Our statutes, like the laws of most other countries, limit the coastwise trade to American vessels. I think we can safely rely upon this decision and the construction to justify the conclusion that we do not invade the terms of the treaty if we permit coastwise vessels to pass through the canal free. I apprehend that no possible question would be raised upon it, unless it were that the effect under the treaty would be to give coastwise vessels of Canada and British America the same privilege.

**FROM SPEECH OF HON. JAMES E. MARTINE, OF NEW JERSEY, IN
THE SENATE OF THE UNITED STATES JANUARY 22, 1913.**

Mr. MARTINE of New Jersey. Mr. President, my former vote on the question of tolls on the Panama Canal was the result of my conscientious and deliberate judgment. Notwithstanding the splendid argument of the senior Senator from New York [Mr. Root], I am frank to say that I am still unconvinced of any wrong or injustice in my position.

Mr. President, I feel that the Senator from New York was most unfortunate in that part of his remarks where he referred, at least by innuendo, to those who opposed his proposition as "playing to the galleries." No, Mr. President; higher motives prompted my vote on this question. I yield to no man in love and admiration for the lofty sentiments expressed by the Senator from New York. This, however, is not a question of the peace of the world nor of the honor of the American Nation, but it is a question of right and justice to the American people.

The Senator from New York asks, "Are we Pharisees?" No; we are not Pharisees nor hypocrites, but a brave and honorable people demanding our rights. It seems to me that it comes with ill grace for Great Britain even to suggest bad faith on our part, when her whole history has been that of greed and avarice in dealing with the nations of the earth. Read, Mr. President, the story of Great Britain's occupancy of India and of Egypt, and you find it is one long story of commercialism for England, right or wrong.

The Senator calls for arbitration. History tells us that Great Britain's policy has been to arbitrate only with nations stronger than herself. How well I recall a few years ago when that Spartan band, the Boers, in their heroic contest for liberty, prayed and pleaded for arbitration. Humanity the world over joined in that plea; but the ear of Great Britain was deaf to all supplications. Shall we arbitrate this question of our right to regulate the canal we have built and paid for? No; never.

Mr. President, the whole question, I feel, is summed up in this editorial from the London Times of recent date:

If this bill becomes a law, it will prove a little short of disastrous to British shipowners. With their best brains and energy devoted to their work, the United States will now proceed to turn out vessels on a wholesale scale, and, aided by their freedom from Panama Canal tolls, there is little to prevent them from entering with success all those trades in which British shipowners are now the principal carriers.

As I said heretofore when this question was before this body for consideration, I now repeat that I favor free tolls for American craft, both ocean and coastwise, and desire that the tolls for all other vessels of the world be only sufficient to maintain the physical condition of the canal, and that the cost and interest thereon shall be America's contribution to the world. I believe that such a policy on the part of this Government with reference to the Panama Canal would rehabilitate our merchant marine, and that in a few years we would command the carrying trade of this hemisphere.

Mr. President, I stand by my former vote on this question, and will vote "no" on the proposition to rescind our former action.

**FROM SPEECH OF HON. JOHN SHARP WILLIAMS, OF MISSISSIPPI,
IN THE SENATE OF THE UNITED STATES AUGUST 7, 1912.**

Mr. WILLIAMS. Mr. President, I shall vote for the exemption of the coastwise vessels of the United States, but I hope not upon the grounds laid down by the Senator from Iowa [Mr. CUMMINS] in his fourth speech upon the subject. I shall vote for the exemption of the coastwise vessels of the United States upon the ground laid down by the Supreme Court of the United States in *Olsen* against *Smith*, in One hundred and ninety-fifth United States, that ground being, in short, that as foreign vessels never had any standing in the coastwise trade at all, any provisions with regard to the coastwise trade can not be a discrimination. It is clear to anybody who can read English that, whether this treaty ought to do it or ought not to do it, this treaty does forbid us to make any discrimination. The Senator from Iowa tells us that other powers will make discriminations by granting their vessels rebates equal to their tolls. Whenever they do, that moment we have the right, under the treaty itself, to put ourselves upon a ground of equality with them by making an equal rebate.

I agree with the Senator that if we have no right to make a direct discrimination we have no right to make an indirect discrimination by making rebates; but if other nations do it, as he freely predicts that they will, and the Senator from Massachusetts [Mr. LODGE] freely predicts that they will, then in order to reinaugurate the equality itself, which is the object of the treaty, we would have the right to do it.

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I shall vote to exempt coastwise vessels from these tolls, because I think we have a right to do it. I think the principle laid down by the Supreme Court is a correct principle in municipal and in international law.

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I stand here, as I shall stand always, I hope, for the principle that the judicial proceedings which have been instituted between man and man under government shall some day become instituted between nation and nation in the entire world. I am willing to arbitrate anything except the life of the Nation, the independence of the Nation, because self-preservation is the first law of nature with a nation as with an individual. We may afford to differ, I think, as to whether we can, without discrimination and without violation of this treaty, exempt coastwise vessels; and I share the opinion of the Senator from Iowa that we may. I think the principle laid down by the Supreme Court is sound in law and in ethics, and would be so held by any self-respecting international tribunal of arbitration; but to serve notice upon the world in advance from the seat of a Senator of the United States that we would go to war, sacrifice our youths, shed men's blood and women's tears, sacrifice our treasure, sacrifice the blood and the treasure of other nations rather than to submit to arbitration a simple little question about dollars and cents of canal tolls is a position against which I wish to protest.

**FROM SPEECH OF HON. JOHN R. THORNTON, OF LOUISIANA, IN
THE SENATE OF THE UNITED STATES AUGUST 6, 1912.**

Mr. THORNTON. Mr. President, as a member of the Inter-oceanic Canals Committee, I have attended all of its 21 sittings on this subject save 5, and on those occasions I was with other committees, principally that on Naval Affairs, and I doubt if this attendance record was excelled by any other member of the committee except the chairman, and I have closely followed the discussion in this Chamber from the beginning.

I wish to briefly state my conclusions on two important matters pertaining to the Panama Canal bill, which are productive of great diversity of opinion in the Senate, viz: First, the right of the United States to permit the free use of the canal to any ships sailing under the American flag, while collecting tolls from the ships of all other nations; and, second, whether admitting the right to thus exempt ships sailing under her own flag, it would comport with public policy to extend this privilege to all such ships.

Able arguments in favor of and against the right of control of the United States in this matter have been made on the floor of this Chamber during the

discussion, and to me it seems wonderful that the Hay-Pauncefote treaty, the construction of which has produced such discordant views, a document treating of matters of such great interest to the world in general and to the United States in particular, should have been so drawn that different Senators seem compelled to look at it from such different angles and draw diametrically opposite conclusions from a study of it.

It is the first part of paragraph 1 of article 3 which is the bone of contention, if I may be pardoned for using such a reference to it, and which reads as follows:

The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect to the conditions or charges of traffic, or otherwise.

It is contended by some that this language includes the United States in the term "all nations," and hence precludes her from extending favors to her own citizens or commerce not extended to the citizens or commerce of other countries, while others maintain that the term "all nations" necessarily means all other nations, and does not preclude us from favoring our own people, but only binds us to deal impartially with all other people.

As for myself, I had no difficulty in reaching the conclusion that the United States had under the terms of the treaty the undoubted right to exempt from the payment of tolls all American vessels engaged in the coastwise trade.

It is a well-known legal rule that in the interpretation of a statute its context must be studied and the spirit and object of the law sought for.

We see in the first part of the disputed paragraph that the canal shall be free and open to the vessels of all nations on terms of entire equality; but we also see in the second part of the same paragraph that the end sought to be accomplished by this first part, the spirit and object of the law, as it were, is that there shall be no discrimination against any nation.

Now, it is well known that at the time of this treaty the ships of no other nation were permitted to do business in the coastwise trade of the United States, and that is the law still, and certainly it can not be abrogated by this treaty.

It follows then, that as no foreign ship can operate in our coastwise trade and compete with us in that trade we are not discriminating against such ships by allowing to our own coastwise ships the free use of the canal.

These were the views I expressed in the committee sessions, as will appear by the printed report of the proceedings, and I voted in accordance with them.

FROM SPEECH OF HON. WILLIAM SULZER, OF NEW YORK, IN THE HOUSE OF REPRESENTATIVES MAY 21, 1912.

Mr. SULZER. Mr. Chairman, I am an American, and I am in favor of American ships—flying the American flag—going through the American canal free of charge. Hence I shall vote for free tolls for all ships flying the flag of my country.

I want to do something to aid the American merchant marine, and free tolls for our own ships will go far to accomplish what patriotic America hopes to see accomplished ere we adjourn.

We all realize that there is a sentiment, growing stronger and stronger every day, throughout the country in favor of doing something to rehabilitate our merchant marine. This is patriotic, eminently proper, and should be encouraged by every true American.

There is no man in this country more anxious and more willing to enact proper legislation to restore the American merchant marine than myself, but I want to do it honestly; I want to do it along constitutional lines; and I want to do it in harmony with that fundamental principle of equal rights to all and special privileges to none.

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In this connection I must take exception to the remarks of the gentleman from Minnesota [Mr. STEVENS] regarding the construction of the Hay-Pauncefote treaty. I stand here as chairman of the Committee on Foreign Affairs of this House, having given careful study to that treaty, and to every circumstance connected with it, and I speak advisedly, and for our distinguished Secretary of

State, when I say to this House that there is not a line in that treaty that precludes the Government of the United States from permitting our own ships going through the Panama Canal free of tolls. [Applause.]

If you want to bring about a situation such as the gentleman from Georgia [Mr. ADAMSON] has mentioned; if you want to get this matter into The Hague Tribunal; if you want to invite a lawsuit, then pass this bill precluding the ships of the United States from going through our own canal free. That may foreclose our rights in the future. That may cast a doubt upon our construction of this treaty, and at some future time involve the Government of the United States in a controversy of international importance regarding our rights to grant preferences to our own ships using our own canal which the people of this country have paid for and have built. I am opposed to any legislation that will bring about such a contingency. To me the treaty is clear and plain. I am opposed now to bringing this treaty into the realm of dispute. I am opposed to inviting at some future time an international lawsuit. In my judgment the only way that we can prevent that is for the representatives of the American people to stand up here and vote in favor of American ships going through the canal free of tolls. [Applause.]

**FROM SPEECH OF HON. FRANCIS G. NEWLANDS, OF NEVADA, IN
THE SENATE OF THE UNITED STATES JANUARY 22, 1913.**

Mr. NEWLANDS. Mr. President, after over half a century of diplomatic negotiation, of engineering investigation, and of financial negotiation, the Panama Canal is approaching completion, and within a year will be open to the ships of the world. It is estimated that of the tonnage passing through that canal about nine-tenths will be international tonnage and that about one-tenth will be domestic tonnage in the coastwise trade. Therefore the immediate benefit of this enormous enterprise, involving an expenditure upon the part of the United States of \$400,000,000, will be enjoyed by foreign countries to the extent of nine-tenths and by the United States to the extent of one-tenth.

In the passage of the act relating to the operation and maintenance of this canal Congress, pursuing its traditional policy of maintaining an untrammelled, an unburdened, and an unfettered domestic waterway transportation, and regarding the Panama Canal, in addition to its international use, as a great domestic waterway connecting the waterway systems of the two coasts and enabling free communication by water between them, declared that no tolls should be levied upon ships passing through the canal engaged in the coastwise trade of the United States.

England, under the inspiration of Canada—that inspiration doubtless quickened by the action of the transcontinental Canadian railroad, whose action in turn was quickened by that of American transcontinental railroads—protests against this declaration that no tolls shall be levied upon ships in the coastwise trade as a violation of the rule of equality fixed by solemn treaty between England and the United States.

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Mr. President, why was it that we declared in the act that no tolls should be levied upon ships engaged in our coastwise trade? We did it, first, because we had imposed upon international tonnage very much less than a fair proportionate charge of our cost of operation, maintenance, and interest, and therefore, in justice to domestic commerce, we could exempt American ships. We did it, further, in pursuance of the traditional policy of the United States, which demanded, so far as our domestic waterways are concerned, that our rivers should be improved, our lakes developed, our canals constructed at the expense of the National Treasury, and without imposing a dollar of burden upon the commerce of the country.

Was it to be expected that the United States, having pursued this traditional policy for over a century, should, when it was assuming the position of a benefactor to the commerce of the world, abandon it and substitute for an unfettered and unburdened domestic commerce a fettered and a burdened commerce?

Now, Mr. President, what is the occasion of this difficulty? What has been the difficulty all the way through with reference to the Panama Canal? Our difficulty has always been the opposition of the transcontinental railway car-

riers of the country, determined, first, to prevent interoceanic communication and then to paralyze it by the burdens imposed upon it. It was for this reason that for years they prevented and delayed the inauguration of the canal enterprise, and that, later on, as its completion approached, they sought to induce us to permit ships owned by transcontinental railroads to traverse the canal, knowing very well from past experience that through their ownership of ships subsidized by the profits from the rail traffic they could paralyze water transportation. Then, having failed in that, they were eager to have us impose a burden upon the domestic transportation between the two coasts in the shape of tolls, such burdens as all the other waterway transportation of the country is entirely free from.

Having failed to influence and control our legislation, they then sought their brother carrier to the north in Canada, a transcontinental railway running from ocean to ocean and interested with the transcontinental railroads of the United States in monopolizing transportation between the two oceans and in paralyzing the canal. They sought to make that railroad the instrumentality of foreign interference, and through it they appealed to its sovereign country—Great Britain—to protest against this action as a discrimination against foreign commerce in violation of the terms of the Hay-Pauncefote treaty.

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All that foreign nations have the right to insist upon is not that we should allow them to control our domestic policy, but that in carrying out the domestic policy, which involves levying no tolls upon domestic ships, we should see to it that the tolls remitted are not imposed as an additional charge upon the ships of foreign nations. That is all the right which they have either in morals or under treaty obligations.

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• Shall we, simply because the Canadian transcontinental railway has united with the American transcontinental railways to secure foreign intervention in order to secure them a monopoly of the transportation of the country and in order to enable them to paralyze the Panama Canal as an instrumentality of commerce, shall we meekly yield to this demand—this demand not based upon justice or equity—that we should abandon our traditional domestic policy of a free and unfettered domestic commerce? Will we not discharge every obligation to the nations of the world and will we not further increase their obligations to us by declaring that all the tolls remitted to domestic ships shall be credited upon the interest charge of the United States against the nations of the world for the construction and conduct of this gigantic enterprise?

Mr. President, I contend that the whole history of this transaction furnishes convincing proof, not of the desire of this Nation to oppressively burthen international tonnage passing through the canal, but of a just and generous spirit—a spirit which recognizes our obligations as an international trustee without contention for domestic advantage. No unjust burthen has been placed by its action upon foreign nations. On the contrary, our Nation is to-day bearing, and will for many years continue to bear, a disproportionate part of the burthen of this great international enterprise. Having only one-tenth of the tonnage carried through the canal, it will for a long time bear at least two-thirds of the charges for operation, maintenance, and interest, and against this charge it will receive only a paltry credit of the tolls which it might, if it saw fit, impose upon domestic ships engaged in the coastwise trade, but which, in pursuance of a traditional policy of unrestricted domestic waterways, it proposes to remit. Such remittance imposes no inequality or injustice upon foreign nations. Such nations can easily pay into the canal fund the tolls imposed upon their ships, if they see fit, and those tolls will be righteously adjusted whether they be paid by the ships themselves or by the nations whose flags they bear.

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Confident of the justice of our position, let us adhere to our time-honored policy of an unburthened domestic commerce, at the same time seeing to it that an accurate account be kept of our domestic tonnage through the canal and that a proportionate charge on this account be credited upon our interest charge against the canal enterprise. Thus no disproportionate charge will be made against international tonnage and the burthens of the canal will be proportionately distributed among the nations using it.

**FROM SPEECH OF HON. JOSEPH G. CANNON, OF ILLINOIS, IN THE
HOUSE OF REPRESENTATIVES MAY 18, 1912.**

Mr. CANNON. Mr. Chairman, I shall not undertake to discuss how far we may go under the treaty in saying that in the coastwise trade all ships flying the American flag may pass through the canal without the payment of toll. I quite agree with the gentleman, my colleague [Mr. MANN], touching the construction of that treaty, and I am gratified that I had the pleasure of listening to his remarks and that the House also had an opportunity of hearing his views.

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Now, there is a cleavage between the gentleman from California, Representative Knowland, and the gentleman from Minnesota, Representative STEVENS. They agree in some respects and in others they disagree. I listened with great pleasure yesterday to the gentleman from Minnesota [Mr. STEVENS] make one of the most admirable speeches that I have ever heard in the House, but after all it seemed to me that the speech rested upon a shadow for a foundation. And what a magnificent building he did build considering the foundation. [Laughter and applause.] Ours is a representative Government. We all respond to public sentiment and the interests primarily of our constituency. Therefore I can see how the gentleman who represents St. Paul, Minn.—and it is ably and patriotically represented—would hold a different view as to the real or supposed interest of the gentleman who represents the Golden Gate than is held by that gentleman himself. The gentleman who represents the Golden Gate ably and interestingly insists that the coastwise trade of the United States is barred to all the flags of all the world; that we own the Panama Canal and that the people on the Pacific coast are interested in having coastwise trade pass through that canal without the payment of tolls.

I was greatly interested and I applauded when he said that the waterways of the great Republic were without toll for American ships in the coastwise trade and interstate-commerce trade. I was aware that that was the case, and I am glad it is. They will always be free so far as my vote is concerned. I followed him when he spoke about the dollar a ton that this bill would levy on our ships passing through the canal, and the burden that would impose on that part of our interstate trade which will go by water from Calro, from the upper Mississippi River, and from the Ohio down to the Gulf, and in fullness of time pass through the canal and to the Pacific coast, and how that additional burden, if imposed, would protect the transcontinental railways which run through the district represented so ably by the gentleman from Minnesota [Mr. STEVENS]. That is to say, that in the competition with the transcontinental railways that dollar a ton on water-borne commerce would cut some figure that would affect all the interstate commerce of this great country.

Do gentlemen stop to think that this great country—I have frequently made this statement, but I am apt to make it again—has an annual production of thirty thousand millions of dollars, more than 90 per cent of which is consumed and goes to market by water and by railway in the United States? Out of that thirty thousand million dollars' worth of products only two thousand million dollars' worth goes to foreign markets. We produce in the United States more than one-third of all the products of all the civilized world; and when you put an exceptional burden of a dollar a ton on the coastwise trade it affects every ton substantially that goes into our internal commerce, whether it goes by rail or by water. [Applause.]

I have been amused at the majority report. It is an able report, ably defended by the distinguished chairman of that great committee [Mr. ADAMSON], Smiling Jim, whose ability is greater than he knows. [Applause.] I listened to his speech with great pleasure; but, bless my soul, he says that under the treaty you can not let our coastwise trade go through our canal without payment of toll. Oh, no, gentlemen say, that would be a violation of the equality provision of the treaty. Then in the next breath they say, "Yes, you must make our ships pay tolls, and then you can legislate the money back to them by way of a rebate." But when you come to that legislation, here comes old Subsidy. [Laughter.] It reminds me of the old chestnut about the doctor throwing his patient into fits and then curing the fits. The gentleman from Georgia throws the House into a subsidy fit. He knows how one shall put 10,000 to flight, and that if you cry "subsidy" many will run.

But that argument has been substantially answered. If it is a subsidy in this case, it is a subsidy in the case of that great commerce which passes through the Soo Canal, which some one has said is of greater tonnage than all the foreign commerce of the world. I do not know whether that is true or not.

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I am not afraid of subsidy. I would subsidize our foreign tonnage if I thought we could do it successfully. The practical difficulty is this: If without a cent of expense to us for their construction ships were given to us to sail under the American flag, how long could we run them, when it costs twice as much to run an American vessel as it costs our foreign competitors for similar service on the great highway of the ocean? Still I am willing to venture along the coast of South America, as that is near by, and the Panama Canal is to be opened. I would even, aliunde this legislation, give a subsidy to ships engaged in that trade; but we monopolize, of course, our coastwise trade, in which a great and growing tonnage is employed and will continue to be employed. It is pretty important that we have somewhere ships upon the sea that will train the seamen who in the event of trouble can man our battleships. Therefore, as we are supreme concerning our own coastwise trade, it is important that it should be maintained as it is, and not burdened, because it gives enough employment in large part to beget the construction of ships at our shipyards. It is necessary for us to have shipyards, and, thank God, we have them. I am a friend of the coastwise trade, and from the standpoint of a great public policy, touching the building of ships, touching the commerce in our coastwise trade, I will not vote to burden it as has been suggested by my friend [Mr. STEVENS of Minnesota], whose outlook, as it seems to me, is a little narrower than the one I happen to have now. I think very likely if I lived at St. Paul I might have the same sentiment, even if I could not build so magnificent a foundation upon a shadow as my friend did. I do not believe this House of Representatives will do otherwise than let ships engaged in our coastwise trade go through the Panama Canal as they go into the harbors of New York and San Francisco and upon the Sound and into New Orleans and into all our seacoast harbors, free—without tax. That is only simple justice and sound public policy. [Applause.]

**FROM SPEECH OF HON. HENRY A. COOPER, OF WISCONSIN, IN
THE HOUSE OF REPRESENTATIVES MAY 21, 1913.**

Mr. COOPER. Mr. Chairman, I have been very much entertained to-day in observing the vigor and frequency with which the word "subsidy" is being used here in an attempt to frighten gentlemen who believe that coastwise traffic in American ships through the Panama Canal ought to be free. Gentlemen shout "Subsidy!" "Subsidy!" at those of us opposed to tolls on coastwise traffic. As for myself, I have outgrown the age when a mere epithet has any terrors. "Subsidy!" There is no more of subsidy in letting American coastwise ships go through that canal free than there is to letting them go from port to port down the Mississippi River free, the Government having expended approximately \$120,000,000 upon that river for improvements, and now expending annually \$1,000,000 in appropriations for maintenance. [Applause.]

Wherein is there any distinction? If there be any distinction, let gentlemen point it out. Is it a subsidy to allow coastwise ships to go through the Soo Canal free or to enter New York Harbor free or to go down the Ohio River free? This word "subsidy" has been used for over a hundred years in this country by those opposed to any Government system of internal improvements, and especially to improvements of rivers and harbors.

It is the very argument that confronted Henry Clay and Andrew Jackson and other statesmen who believed with them that, on grounds of high public policy, this Government has the right to improve the waterways of the country, not because such improvement is for the benefit of any particular class of our citizens but because it cheapens transportation to all the people and so is for the good of all the people. [Applause.]

Let any gentleman on this floor who says that we are "subsidy" men distinguish between boats going free of tolls down the Mississippi from St. Paul to St. Louis or Memphis or New Orleans and letting them go free of tolls from New Orleans through the canal to San Francisco or Seattle. That canal is about 40 miles long. Suppose that it were cut through a range of hills 40 miles

wide in Iowa. What, then, would be thought of a proposition to charge tolls, amounting to a tariff wall between different sections of this Republic? I am for protection against the poorly paid labor of China and the underpaid labor of other countries, but I am for absolute free trade between every part of the Atlantic and the Pacific coast line of the Republic of the United States. [Applause.]

Putting tolls of \$10,000 or \$12,000 upon an American ship carrying American goods under the American flag going through that American canal is, in effect, only putting \$10,000 or \$12,000 of tariff upon the goods. You Democrats are accustomed to declare that the amount of a tariff on goods from Europe, if collected at New York, is added to the price of the goods. Is it not added to the price of the goods if collected at the Panama Canal on a ship going from New York or New Orleans to California? How do you Democrats answer that question? How do Republicans answer it—men who have always demanded free trade between the States?

The argument made here about subsidy was one of the arguments used by friends of the transcontinental railroads during the first terms of my service in this House to defeat every effort in Congress to provide for a canal to connect the Atlantic and Pacific Oceans through the Isthmus. And, Mr. Chairman, we have been told here of the great work of these railroad companies and of the great amount which their officers invested in building them across the continent. We have heard of this for many years. And yet it is a fact that none of those men really contributed \$1 to build either the Central or the Union Pacific roads.

The Government gave the Central Pacific \$48,000 a mile over the mountains, \$32,000 a mile for other portions, and \$20,000 a mile for all of it. The Patterson commission of 1887 reported that the cost was only \$22,500 a mile. These sums per mile all came from the Government.

Then the Government allowed them to issue first-mortgage bonds on the Government land grants to the roads equal to the total amount which the Government itself gave them through its own bonds. Gov. Stanford himself admitted that they had enough money from their own bonds and the Government bonds to pay for their railroads. The commission of 1887 made an investigation and reported that the proceeds of the Government bonds and of the first-mortgage bonds on the land grants supplied every dollar spent on the Central Pacific. The same is substantially true also of the Union Pacific.

Nobody wishes to do these roads any harm, Mr. Chairman; I have taken time simply to call attention to the facts about the alleged investments of their officers. [Applause.]

I have three times voted against ship subsidies. But the proposition before us is not one of that character.

**FROM SPEECH OF HON. WILLIAM P. BORLAND, OF MISSOURI, IN
THE HOUSE OF REPRESENTATIVES MAY 17, 1912.**

Mr. BORLAND. Mr. Chairman, we have had in the brief discussion on this bill the most brilliant argument, the most learned debate that it has been my fortune to listen to in this House; some of the most masterly speeches, replete with information and erudition. The speech to-day of the gentleman from Wisconsin [Mr. Esch] was a remarkable presentation of facts governing the movement of the great commerce in the civilized world. Scarcely a factor that enters into the movement of that commerce and the channels which it will seek, or ought to seek, seems to have been omitted by him in his wonderful grasp of the subject. But in all of that remarkable address, which showed how the Panama Canal could be made of permanent usefulness to the commerce of the world, I listened in vain for one word that showed how a single, solitary vessel carrying the American flag would go through the canal. He told us how Liverpool could use the canal to reach the markets of South America. He told us how Europe could reach the Orient. He told us how England would be brought in close touch with her colonies. But nowhere was a single flag bearing the Stars and Stripes going through the canal.

As the canal approaches its completion the American people will look upon it as either a pure military necessity, the cost for which must be charged off as other items of military expense are charged off, or they will look upon it as they have been taught to look upon it—as a great agency for the promotion of Ameri-

can commerce. If the present bill, unamended and unmodified, becomes a law in relation to the Panama Canal, the net result is that we have spent \$400,000,000 for no purpose on earth except to bring a battleship once in 40 years from the Pacific Ocean to the Atlantic Ocean in time of war. [Applause.] Every nation on the globe, with its ships, can use the canal to the same advantage as ourselves, and, in addition, we have even excluded ourselves from the ordinary advantage that every nation claims for its purely coastwise commerce.

If our treaties will not bear the construction that the coastwise commerce, at least of the United States is entitled to preferential rates in the canal, then we are worse off than we would be if we had not built the canal, for we have put forever the carrying trade and monopoly of the commerce of South America into the hands of the English and the Germans.

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The cost of the canal is \$400,000,000. The interest on that at 3 per cent is \$12,000,000. The majority report of the committee says it is necessary that somebody pay for this canal, and gives this as a reason for charging tolls to American ships. The report further says that by the highest estimate placed on the tonnage that will go through the canal by no possibility can it pay the interest on the cost of the investment; therefore it is only possible for us to get any return from our investment by encouraging American commerce from the east coast to the west coast of America. We are told that we are bound by the Hay-Pauncefote treaty not to discriminate in favor of American ships as to the coastwise trade of the west coast of South and Central America. We are told that we have no such control over the commerce going to the Orient as will place us in any advantageous position in comparison with the subsidized ships of England or of Germany, and that the sole dividend the American people can draw on that \$400,000,000 investment is the possible encouragement of shipping going through the canal between the east and west coasts of America.

If there be not that dividend, then there is no dividend from the \$400,000,000 invested except the possible saving of the expense, once in 40 years, in taking a battleship around Cape Horn. We all hope that the need of such expenses of taking battleships from one coast to the other will be on rare occasions and very few and far between.

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Those who favor charging the tolls can sit down and figure out that the toll is absorbed somewhere and does not reach the consumer. I have seen gentlemen figure that out in regard to a protective tariff. Gentlemen have figured out that all kinds of charges placed on commerce are absorbed somewhere, but my belief is that ultimately the consumer in domestic commerce pays the entire cost of transportation added to the article produced, and that in foreign commerce, where we come in competition with foreign people, the American producer pays the entire cost of transportation, and that there is no absorption of it at all.

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I am very glad that these gentlemen on the west coast States have maintained this fight for free tolls, at least for American commerce; but we ought to go much further than that. We ought to provide for preferential duties on all goods coming in American bottoms. We ought to encourage by every possible means a financial and mercantile connection with every Central and South American country, and then the American people—not the Pacific coast alone, but every American producer and every American business man—will begin to realize a dividend upon that \$400,000,000, which will vastly increase the prosperity, wealth, and power of our beloved country. [Applause.]

FROM SPEECH OF HON. HENRY CABOT LODGE, OF MASSACHUSETTS, IN THE SENATE OF THE UNITED STATES JULY 20, 1912.

Mr. LODGE. I made that statement because the question as to our right to exempt American vessels from tolls would be a question arising under the interpretation of a treaty. A question involving the interpretation of a treaty would undoubtedly go to arbitration under our general arbitration treaties now existing. I confess at that moment I thought only of that proposition. Since then the debate has developed a point which I had not thought of, speaking as I then did offhand—the question of the Canal Zone being domestic territory to all

intents and purposes. I am not prepared to say now, without further consideration, that we should be bound to submit a purely domestic question of that kind. I have no question, as I argued the other day, that the repayment of tolls to reach the same result of exempting American vessels would not be arbitrable, because that is purely a domestic question. Whether our territorial jurisdiction in the Canal Zone would not bring it within the same class I am not at all sure. I am not prepared to say that it would not, and that the Senator is not correct in the view he is now taking.

Before I sit down I should like, if I may, to call attention to one thing in this connection. We are now so familiarized with Panama that we think of nothing else. But in the preamble of the treaty that was adopted, the actual Hay-Pauncefote treaty, you will notice that it says:

Being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans by whatever route may be considered expedient, and to that end to remove any objection which may arise.

The route that was in everybody's mind at that time was the Nicaragua route. There was no possible prospect of our securing there what we have secured in Panama. All we could have hoped to secure from Nicaragua and Costa Rica would have been the right to build a canal. Therefore the situation contemplated by that treaty was one quite different from that which has arisen. That which has arisen was also contemplated as possible.

Mr. CULBERSON. Does not that treaty contemplate and fix terms in contemplation of the United States themselves becoming the owner of the canal?

Mr. LODGE. Certainly it does. As I said, frankly, I had not thought of that side of the question—our taking over the Canal Zone and making it to all intents and purposes domestic territory. The titular sovereignty remains in Panama, but the actual sovereignty is in the United States. I think that opens a question of very grave doubt, which certainly I am not prepared to answer finally, so far as I am concerned, at this moment. I think it opens a question of very grave doubt as to whether that is not as much a matter that is wholly within our own jurisdiction as the tolls on a canal built in our territory, like the Sault Ste. Marie or any of those canals.

Mr. POMERENE. With the permission of the Senator from South Carolina, may I ask the Senator from Massachusetts another question?

Mr. LODGE. Certainly.

Mr. POMERENE. The Senator has just explained his reasons for voting against the Bard amendment, taking the position that without it we would have the right to regulate and manage the canal. The Bard amendment was a substitute for article 3 of the pending treaty. The treaty, as finally ratified, contained in paragraph 1 of article 3 this language:

The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

If, under the treaty, we had general authority to control it and regulate it, why were we so specific in stipulating that we should have the right to maintain the military police which might be necessary?

Mr. LODGE. Because at that time it was not known, of course, on what terms we should have the zone or have the canal. It might have been built through the territory of Panama by a private company to which we might advance our credit. We could not tell what the conditions would be there. It was necessary, therefore, to reserve that right.

That clause as it stood in the first treaty contained a prohibition against fortification; and we put in the treaty a Senate amendment giving us the right to defend the canal in any way we pleased. When the second treaty was made that amendment of the Senate was left out as well as the fortification clause, so that no restriction at all in regard to fortification was placed upon the United States.

As the matter stands now the military police provision is perhaps needless. But as it stood then, when we did not know under what precise terms we should build the canal, it was necessary to put it in.

to compete to pass without charge through the canal are we discriminating against English or German or other foreign tonnage when we impose tolls upon it? How is the foreigner affected by this alleged discrimination? Certain it is we are not changing his relations to the American, for we are in this particular case dealing with commerce with which the former has not now nor will he have after the completion of the canal anything to do. This is a purely local matter and unaffected, so far as the foreigner is concerned, by the canal. If all of our transcontinental commerce now carried by the railroads was transferred to water carriers through the canal without tolls, would any foreign boat be denied any advantage which it now enjoys or which it could enjoy through the canal under the existing law as to coastwise traffic, which law it is not proposed to change?

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It is needless to discuss in detail the circumstances which in 1850 revived the old desire for a canal. It is sufficient that such a desire was strongly revived at that time. The year before the United States had made a contract with Nicaragua whereby the latter granted to an American company the right to construct a canal via the San Juan River and Lake Nicaragua between the two oceans. It should be borne in mind that Great Britain was not favorable to this contract. She claimed an interest in and protectorate over the Mosquito Coast, and insisted that she had rights in Costa Rica and Nicaragua. The United States did not admit these British claims, but nevertheless she had to consider them, and they were influential in causing the Clayton-Bulwer treaty of 1850. The possibility of a canal built by private capital through alleged British territory was being considered. Another company was contemplating a waterway via Panama. Under these conditions it was finally agreed that neither Great Britain nor the United States should take or hold or enjoy any benefits in any canal built by private enterprise which the other did not have. Understand that the then pending proposition of a Nicaragua canal was not for one to be built by Great Britain or by the United States, and all the provisions contained in the Clayton-Bulwer treaty prohibiting the fortification, not of a canal which either country owned but fortifications in the vicinity of the canal, must be taken into consideration in order to determine exactly what the relations were between the United States and England at the time of the making of the treaty of 1850.

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Some Senators, who readily admit that we have the right under the treaty of 1901 to remit tolls on our coastwise shipping passing through the canal, do not believe that we have the right to pass free of tolls boats of American registry engaged in trade between the United States and a foreign country, and I can see better grounds for this belief than in the case of our domestic shipping. But if my heretofore expressed opinion that "all nations," as used in article 3 of the treaty, excludes the United States, which is the owning, constructing, operating Nation—the Nation which provides the rules, and hence is responsible for the canal and its operation—then certainly we have the right to retain a benefit which common sense and common justice would warrant.

But the same gentlemen who would deny us the right to pass our merchantmen through the canal free of tolls insist that we can pass our warships through without charge. They contend that to admit the former under the treaty we would have to interpolate words and meaning which the letter of the treaty does not contain, but the same is equally true as to vessels of war. Gentlemen will use reason in interpreting the provision as to war vessels, but refuse to apply it in the case of vessels of commerce, although these two classes of ships are found in the same paragraph of the treaty, joined by the conjunction "and."

It is generally admitted that nearly every foreign nation grants a subsidy to its boat lines engaged in foreign commerce, and it has been reported that some of the foreign countries are already making legal provision for paying to ships passing through the canal whatever tolls may have been paid to the United States. Will anyone contend that our Government could not do the same things to American boats? If this could be done indirectly by repayment, will it be contended that it can not be done directly?

But a majority of the committee, having in mind the desirability of building up our merchant marine, and wishing to satisfy, as far as possible, the objections of Senators who do not read the treaty as some of us do, has inserted in the bill a provision that the American boat engaged in the foreign trade in order

to receive free passage through the canal must enter into a contract to the effect that in case of war or other emergency such vessel may be appropriated and used by the United States. Under the clear and undisputed terms of the treaty this proposed condition would constitute a class of boats which could be passed without tolls, and no discrimination would be practiced.

What I said at the beginning in reference to tolls was general and applied to all nations, but permit me to advert briefly to the special case of Canada. It is urged that if the tollgates swing free to United States boats, but will open to Canadian boats only upon the payment of tolls, that the Dominion will retaliate at the Canadian Soo, the Welland and St. Lawrence Canals. I can not so believe, and I would not violate either the letter or the spirit of our treaty relations with our neighbor on the north, although her present administration seems actuated by something less than the truest feelings of amity and good will toward us. Our existing treaty with Canada gives that country no right to participate in our coastwise traffic. It does provide, however, that both nations can on equal terms use the Canadian and American Soo locks and canals, the American St. Clair Canal, the Detroit River artificial channel, the Welland and the St. Lawrence Canals. The benefits to the two countries are mutual. There is actual and real reciprocity in this treaty, and no benefits from any other sources than those inhering in the mutual use of the Great Lakes, the Welland Canal, and the St. Lawrence River were contemplated.

It is true that until our new Soo lock, which is in process of construction, is completed, lake traffic would be retarded if we were denied the use of the Canadian Soo locks for some of our large boats, but our treaty with the Dominion will not have terminated before our new lock will be done and Canada will have no just cause to abrogate the treaty if we live up to our part of the contract, and we will. We will be just to all nations, and in this instance "all" will include our own.

Free ships will have a tendency to encourage the building and operating of more ships, and this result will, through competition, have a tendency to materially reduce rates to such an extent that the consignee—the consumer—will get the benefit. But the boat rates must be met by the rail rates. This fact has been made eloquent by every act of the railroad companies since the canal project was started. It is because of this fact that railroad managers want a controlling hand in canal affairs. They know that this completed enterprise will be more potent in reducing rates and in furnishing adequate facilities than all the orders of the Interstate Commerce Commission and all the decrees of the courts. We may not be able to balance all influences and segregate those which are properly due to canal influence, but we may be sure that the lower rail rates will inure to the benefit of the people, as they should, because it was their genius which conceived this enterprise, it was their money and energy which constructed it, and it will be their patriotism which will maintain and operate it.

**FROM SPEECH OF HON. JULIUS KAHN, OF CALIFORNIA, IN THE
HOUSE OF REPRESENTATIVES MAY 21, 1912.**

Mr. KAHN. Mr. Chairman, I have listened attentively to the debate, and I have heard a great deal said about the provisions of the Hay-Pauncefote treaty and their effect upon this legislation. I believe our country has been looked upon by the rest of the world as a Nation of altruists. Since our entrance into the family of nations we have been doing things unselfishly for the benefit of mankind. As early as 1815 Commodore Stephen Decatur destroyed the power of the Barbary pirates, in Algeria, Tunis, and Tripoli, and the countries of Europe thanked us for the good work. Later on, on December 2, 1823, President Monroe announced his famous doctrine that we would look upon the aggression of any European power on American territory as an unfriendly act. The world has tacitly accepted that doctrine. In 1898 we went into Cuba in the great cause of humanity, and gave liberty to the oppressed people of that island. A year or two ago, in the cause of human justice, we returned our indemnity to China. To-day we are helping the Republic of Santo Domingo in solving its financial difficulties. But despite these evidences of altruism, there

is not a single nation in the world that believes we are crazy enough to spend \$400,000,000 in constructing this canal without giving an advantage in the matter of coastwise shipping to our own citizens. [Applause.] And the time to settle the question as to our rights in the premises is now, on this bill, the first bill that attempts to regulate the commerce of that canal. If there be any question about our rights under the treaty, let us settle it now. It will undoubtedly be determined in our favor.

Mr. Chairman, this proposition of free tolls to American ships in the coastwise trade means much to the American merchant marine. I believe that free tolls will encourage the building of American ships for this trade. The building of American ships means auxiliary cruisers and colliers for our Navy in time of war. It was the historic cruise of the battleship *Oregon* all the way around South America to Santiago de Cuba, during the Spanish-American War, that helped materially to bring about the legislation for the construction of the Panama Canal. It is only a few years since our battleship fleet, in its cruise around the world, gave a practical demonstration of the weakness of our merchant marine to all the nations of the earth. For it was a fleet of foreign merchant vessels, carrying foreign flags, that acted as colliers for our battleship fleet. In case of war we could not procure the services of similar colliers. We clearly need American ships. Let us by our votes to-day do something for the upbuilding of an American merchant marine. Let us not neglect this opportunity. And I feel confident the great majority of our countrymen will approve and applaud our course.

**FROM SPEECH OF HON. WILLIAM M. CALDER, OF NEW YORK, IN
THE HOUSE OF REPRESENTATIVES MAY 17, 1912.**

Mr. CALDER. Mr. Chairman, the great problem that is occupying the attention of the business world is the question of transportation. This Government in the creation of the Interstate Commerce Commission sought to regulate transportation over railroads, and in subsequent legislation amendatory of the interstate-commerce act has increased the powers of the Interstate Commerce Commission to an extent not dreamed of by the authors of the original act, so that to-day the commission has power not only to pass upon the question of rebates, practices, and regulations of all description, but also passes upon the sufficiency of rates, and has the right under the law to fix same. As a result of this legislation we have done away with unfair methods and have prohibited a condition of affairs whereby one shipper could be favored over another, thus placing every shipping concern and every railroad in the United States on an equal footing with the other. All of this has been of the greatest benefit to the railroads. It has stopped the giving of free transportation; it has stopped ruinous competition, and to-day no honestly conducted railroad would agree for a moment that they would favor its repeal.

In the consideration of section 5 of the Panama bill we are dealing with a subject of as great importance to the shipping interests of the country as Congress did in the consideration of the interstate-commerce law and in the amendments thereto. In the effort to encourage traffic through the canal we are establishing a competitor with the railroads in which every part of the United States is vitally interested. I represent on this floor a district in the city of New York. As a result of the opening of the Panama Canal that city will become within a short period easily the greatest commercial center in the world. The granting of free tolls to the ships in the coastwise trade will unquestionably add some to the commercial importance of that city, but it is of small moment compared to its effect upon the agricultural and manufacturing business of the entire country. It has been well said in the minority report:

The tolls imposed at the canal will be added to the freight paid by the American people who consume the commodities. We hold this proposition to be fundamental; and viewed in this light, free tolls to our coastwise trade would not be a subsidy to shipowners, but a concession to the American people.

Every ton of merchandise carried through the canal is that much merchandise taken from the transcontinental railroads, thereby compelling the transcontinental roads to compete with the canal. The effect of this, it seems plain to me, would be to compel the transcontinental roads to meet the competition

of the canal, thereby lessening freight rates between points within the country. The impression seems to prevail that the only people to be benefited by the free tolls in the coastwise trade are at points on the Atlantic and Pacific coasts. Careful consideration of the proposition will convince everybody, I am sure, that any reduction in freight rates forced by sea competition between New York and San Francisco is contemporaneously applied between Chicago and St. Paul, Kansas City and St. Louis, and, in fact, every city of the Middle West on the one hand and the Pacific coast cities and towns on the other. The selfish interests of the railroads serving the Middle West is the strongest possible guaranty of the perpetuity of this already established rate-making system. If, by reason of free tolls to vessels in the coastwise trade, freight rates between New York and Seattle would be less than if tolls were charged, they will by the same measure be less between St. Paul and Chicago, Omaha and St. Louis, and Kansas City on the one hand and Seattle and Portland, San Francisco and Los Angeles on the other. In all of the hearings before the Committee on Interstate and Foreign Commerce on the subject of free tolls no one appeared in advocacy of American ships engaged in the coastwise trade paying tolls.

**FROM SPEECH OF HON. ALBERT B. CUMMINS, OF IOWA, IN THE
SENATE OF THE UNITED STATES AUGUST 7, 1912.**

Mr. CUMMINS. Mr. President, it is very unfortunate that there are such differences of opinion upon the question of our right to care for our own people under this treaty to a greater extent than we are called upon to care for the other peoples of the world. I have not known any disagreement here in my short experience so fraught with injurious consequences as the disagreement respecting the interpretation of this contract between the United States and Great Britain. It is of vast import. We must decide it, and we must decide it now. There is no possibility under the circumstances which surround us of evading the duty and the responsibility which have come to us, not by our own act, but through the act of Great Britain.

I do not know just what I can say with propriety in debating a question of this character in open session, and I want to debate it in open session. I premise all that I have to say by the assertion that I want to stay within the boundaries of propriety; I want to say nothing that will disturb the peace we have so long enjoyed, but Great Britain has put the Congress of the United States in a position that makes it absolutely necessary that we shall now construe this treaty; that we shall put whatever interpretation is to be put upon it by the United States. We may defer the exercise of the right, if we like, by attaching the same charges to all ships that pass through the canal, but we can not defer the assertion of the right if we ever intend to exercise it.

Let us see. The House of Representatives passed a bill which in its terms proposed to give to the shipping of the United States a lower toll, or some greater advantage, than it proposed to give to the shipping of the world. Thereupon, Great Britain formally presented a protest to the United States, through the Secretary of State, who esteems it to be his duty—as I have no doubt it was—to lay the protest before the Congress of the country. * * * Her protest here stands as a notice to the Congress of the United States that, if we pass the law which attempts to discriminate between our shipping and the shipping of the rest of the world, she would regard it as a violation of the treaty of 1901.

Tell me, if you can, how we are to escape, if we wanted to escape, the duty of answering that protest. If we do not now assert whatever right we have under this treaty, we will surrender it forever, and in my opinion the Congress that does surrender it will be universally condemned, and the administration that participates in the surrender will be remembered only to be condemned so long as free institutions exist in the United States and so long as the spirit of independence prevails in the hearts of Americans. All that, however, is upon the assumption that the interpretation which I believe this treaty bears and which has been asserted by the House of Representatives is true and just, and it is to that question I intend to devote my time.

* * * I believe, and it can be conclusively shown, that the treaty contains no promise on the part of the United States that it will extend to the other nations of the world the same tolls and the same conditions that we give to

our own shipping. There is no such promise in the treaty. It was never intended that there should be any such promise in the treaty.

I do not claim that it is expressed as happily and fortunately as it could have been expressed, but I am here to rescue our diplomatists from some of the criticism, some of the censure that have fallen upon them in this debate. I do not believe that John Hay has justly incurred the censure which impliedly has grown out of this discussion. I think that with reasonable plainness he has set down the obligation of the United States, and if we are not searching for an opportunity to favor other nations at our own expense, we will have no difficulty in arriving at the conclusion which I believe he intended to express.

I take the treaty just as it is. I eliminate no word from it. I incorporate no word into it. I take it with all its history, with all the circumstances which surrounded it when made, and I believe that I can prove to any impartial mind that there is here no promise whatsoever that the ships of Great Britain shall pass through this canal upon the same terms as to charges and the same conditions as to passage which our own ships may enjoy.

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In 1850 and before, everybody knows there was an enterprise on foot—one organized by private persons, and it was to be carried on by private capital—to build a canal across Nicaragua. You will all remember that not very long before that we had acquired California, and that just a year or two before gold had been discovered in California, and in 1849 and 1850 there were thousands of Americans struggling across the Isthmus of Panama, dying every mile of the way. There is no route known to civilized man which has witnessed more hardship and struggle than the route between the Atlantic and the Pacific at Panama.

There was a great desire for some better means of communication, and a company of Americans had proposed to build a railway across the Isthmus of Panama. It was already fairly well organized, but then, as now, conditions in the Central American States were not favorable. Revolutions were common; governments were not strong; and the men who it was thought might invest their money in the proposed canal at Nicaragua and the men who had proposed to invest their money in the railway at Panama were not willing to do it unless the safety of the physical property which they created could be assured and unless responsible nations guaranteed that justice would be done to them.

It was to give that assurance and secure that construction that the treaty of 1850 was made, and while, as I said a moment ago, there are some things in it which in the light of this day we would not have inserted, upon the whole it is not to be criticized. On the other hand, I think it is to be praised as an evidence of the forward spirit of a Republic then weaker and less able to accomplish things than now. The treaty was made, the railway at Panama was immediately built, and ever since that time, or at least until the railway at Tehuantepec was constructed, it afforded the readiest means of passage from one coast of this country to the other, as well as the readiest means of passage from the west coast of South America to Europe. That was the real reason for the treaty of 1850, and it accomplished its purpose. I pass along.

I have no doubt that both nations practically regarded the treaty as *functus officio*. I have no doubt that both of them for years and years did not look upon it as containing any obligation that was material to the present time. However that may be, when we came, in 1901, to make this treaty there it was. It had never been abrogated, although it may have been violated by both parties. But I do not know as to that. It is asserted that it was often violated by Great Britain, but I have not thought it material to inquire as to that charge. But, at any rate, when we came to 1901 there were obligations in the Clayton-Bulwer treaty that it was necessary to abrogate in order to maintain friendly and peaceful relations with Great Britain if we intended to go forward with the project.

And here I disagree with the Senator from North Dakota [Mr. McCUMBER] wholly, and I put it squarely now. I am sorry he is not here. I am sorry he is not here because if I misrepresent him he is the best person in the world to put me right. He says, or it is his view, that a part of the treaty of 1850 remains in force without having been incorporated into the treaty of 1901. He finds in the treaty of 1850 an agreement on the part of the United States that this canal shall be used by all the nations of the world, including the United States, upon equal terms.

I do not dispute that construction of the treaty of 1850; and if that part of the treaty of 1850 is still in force, or if any part of it is in force upon that subject, then there is much reason for accepting the conclusion of the Senator from North Dakota. But I maintain that there is no part of the treaty of 1850 in force, that it has been superseded and abrogated by the treaty of 1901, and that neither Great Britain is responsible to us for anything contained in the treaty of 1850 nor are we responsible to Great Britain for anything found there unless the obligation has been reproduced and reenacted in the treaty of 1901.

I look only to the treaty of 1901. I am quite willing to examine into the history of the Clayton-Bulwer treaty for the purpose of understanding the exact situation of our State Department and of Great Britain at that time. I am quite willing to look into the history of our country for the purpose of trying to understand better the spirit that then prevailed and what the two nations really desired to accomplish; but, after all, when we have examined the history, when we have become thoroughly familiar with the spirit of 1850, it is yet true that unless we can find in the treaty of 1901 some promise that we will treat all the ships of the world, including our own, upon terms of equality, then the argument falls to the ground.

I ask the attention of the Senate for an examination of this treaty and to my reasons for believing that it does not embrace any such promise.

My proposition is that the Government of the United States undertook the enterprise, and the rules that would have been applicable to it if it had been carried forward by private enterprise are not applicable or appropriate now, because there are certain qualities in sovereignty that ought not to be surrendered, and only the clearest terms will warrant the construction that surrenders them.

AFTER RECESS.

Mr. President, before the recess I had called attention to the chief purpose of the treaty of 1850. Around that purpose all the obligations of that agreement are found. I do not want to be understood as saying—although it may be that in the effort to be brief I did say—that the protection to the enterprises about to be carried forward or that were believed to be imminent was the sole purpose of the Clayton-Bulwer treaty. The protection that was given by the two Governments was accompanied, of course, with agreements respecting the use of the proposed canal and the use of the proposed railway.

When we came, in 1901, to consider the subject again the whole situation had changed. The enterprise that was in view in 1850 had never been carried forward so far as the canal was concerned. It was discovered that in all probability there never would be a canal unless undertaken by some governmental power. The French company had intervened at Panama and had gone into miserable failure and bankruptcy. When, therefore, the respective departments of the two Governments took up the subject again it was known that unless the Government of the United States undertook to build a canal across the Isthmus it would in all probability never be built, and the whole negotiation had that in view.

I agree that it was supposed that the canal would be built upon the Nicaragua route, but I deny that the possibility of building the canal upon the Panama route was not present in the minds of a great many people, and it is perfectly manifest from the treaty itself that it was not absent from the minds of the men who composed the agreement now under consideration. The possibility that the United States might acquire the French company and become the possessor of all the work that it had done, all the machinery that it had accumulated, and all the concessions that had been granted to it was perfectly well understood by those who at that time were interested in the project.

But the chief thing that I want the Senate to bear in mind is that it was then known that whether the canal was built over the Nicaragua route or over the Panama route it was the Government of the United States that would build it, either directly or indirectly. It was, I think, the uppermost thought in the minds of the men who represented the United States that the Government would build this canal as a sovereign, and not merely furnish the aid to some private enterprise that might build it. It was known that if the United States undertook the task there would be certain attributes of sovereignty connected with it from which it was utterly impossible for this country to divest itself.

Now, all these things were present in the minds of the negotiators of this treaty. Bearing these things in memory, I want to call the attention of the

Senate to certain phases of the agreement then made. First, remember that the word "Nicaragua" is not in the treaty. The word "Panama" is not in the treaty. After referring to the convention of 1850, commonly called the great Clayton-Bulwer treaty; it says:

And to that end to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal—

Now, the canal is a ship canal to connect the Atlantic and Pacific Oceans, without any definition or restriction as to place—

To the construction of such canal under the auspices of the Government of the United States, without impairing "the general principle" of neutralization established in article 8 of that convention.

It is of interest, then, to inquire what was the general principle of neutrality recognized and established in the convention of 1850, because I agree that it was in the minds of the representatives of both Governments to preserve the general principle of neutralization.

I affirm that the matter of tolls and charges has nothing whatsoever to do with the general principle of neutralization. The principle of neutralization here referred to was that the canal which was about to be built by the Government of the United States should be free and open to the commerce of the world, both in peace and in war. There is no other principle of neutralization that can possibly be applied to a subject of this sort; and we undertook when we affirmed that principle that both in peace and in war this canal should be open to the commerce of the whole world, and we agreed to nothing more. That is the sum and substance of the agreement which we made with Great Britain when we revoked by express terms the treaty of 1850.

I have great respect for the opinion of that distinguished statesman whose report was read by the Senator from North Dakota [Mr. McCUMBER] this afternoon, but if it is to be inferred from that report that any obligation contained in the old treaty continued after the new treaty was made, and which was not renewed in the treaty of 1901, then I must dissent from his construction of the transaction. The treaty which now binds the United States expressly says:

The high contracting parties agree that the present treaty shall supersede the aforementioned convention of the 19th of April, 1850.

If this convention superseded the old one it is impossible to conceive how any part of the old one remains in force unless it is repeated in the new one. It is a contradiction in terms, and without a close examination of the report to which the Senator from North Dakota referred I am bound to conclude that it does not bear the interpretation which that distinguished Senator put upon it.

Now, let us see what we agreed to do. First, we agreed to set aside or supersede the old treaty with this one. Second—

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

The Senator from North Dakota [Mr. McCUMBER] asked this afternoon what interpretation or effect should be given to the phrase "subject to the provisions of the present treaty." It is not difficult to answer that question. There are agreements on the part of the United States in this treaty, and the absolute sovereignty and control and management of the canal are subject to the limitations of these agreements.

ARTICLE 3.

The United States adopts, as the basis of the neutralization of such ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal; that is to say—

Remember that we are dealing with a work undertaken by the Government of the United States. It can not be true that there was absent from the minds of the men who made this the possibility that the United States would not only construct the canal, but would become the owner of the territory through which it was constructed. That was one of the things that the United States might do when it undertook the construction of the canal. I do not know how clearly that was recognized, but I do know that the makers of this agreement must

have anticipated that it was within the bounds of possibility or probability that before the United States entered upon this work it would acquire the sovereignty of the territory through which the canal was to be constructed.

It declares that—

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

I venture to say that this agreement may be stated in this way: That the canal shall be open to commerce in both peace and war, and that the charges which we place upon commerce for the use of the canal shall be just and equitable. That is the agreement of the United States; it is the only agreement that has been made by the United States; and so long as we keep the canal open for the use of the world and so long as we charge the world no more than fair and just and equitable tolls, so long we shall have complied to the uttermost with our obligations.

I pause to say here that I am not one of those who believe that if we were to disagree with other nations of the world as to whether the tolls were equitable or fair, it would present a controversy that would be settled by arbitration. I deny the whole scheme of arbitration so far as this subject is concerned.

* * * * *

Mr. President, I said that our agreement with the world was that we would make fair and equitable charges for the use of the canal, and that if a controversy arose with respect to that question it ought not to be referred to arbitration; and I was about to say why. At the bottom of all judicial procedure, as the underlying principle of all judicial procedure, we insist upon an impartial tribunal, a tribunal that is not interested in the outcome of the controversy. If we call a jury and we find that any member of the jury is interested in the result of the trial, he is at once challenged; if a case comes before a judge who found to be interested in the suit, he is at once disqualified from performing his function. Therefore any international controversy in which necessarily the representative of every nation on the face of the earth is interested against one of the parties to the controversy can not be submitted to arbitration.

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But I pass now to the further examination of what this contract means. What did we agree to do? There are two rules of interpretation that I am sure every Senator will approve, and I name them: First, we must give effect to each part, some effect at least, so that each part will be in reasonable harmony with every other part; and, second, the construction ought to be one that will permit its observance with the preservation of national honor. It is incredible to me that we will put an interpretation upon this agreement—as I think, a strained and unnatural interpretation—which every man with the least patriotic sense and with the least pride in his heart for the country of which he is a citizen knows the country will not observe.

I do not say that we could not afford to pass all vessels through the canal with the same tolls. We could afford to lose the money without the least suffering or peril upon our part, but the interpretation of this treaty which leads to the conclusion that we can not discriminate in favor of our own shipping, carried into other subjects, would rob this country of its right to protect itself, would rob it of its dignity, and would destroy its honor as a nation among the free nations of the world. We can not say that we are included within these rules or within the phrase "all nations" for one purpose and say that we are not within that phrase for other purposes; and if we now yield to the demand of Great Britain that this legislation, which is based upon a discrimination in favor of our own shipping is in contravention of the treaty, we will be compelled to yield to her in matters that will involve, or that may involve, the life of the Nation, or we will then be compelled to conclude that we are violating our solemn promises.

I want to call the attention of the Senator to some things that this will do for the people of this country, and to some things that show to my mind conclusively that it was not intended by the men who made the agreement that the same terms and the same conditions should be imposed upon our shipping that may be imposed upon the shipping of foreign powers.

Let us see. Most of these things have been mentioned already, but I want to drive them home now if I can. Everybody admits that we made the same agreement with regard to ships of war that we have made with regard to ships of commerce, and that if we have agreed to charge our ships of commerce the same that we charge other ships of commerce, then we have agreed to charge our ships of war the same that we charge other ships of war.

I know, of course, that everybody will agree that we can not do that, and everybody says that must be eliminated from the compact; but I am inquiring as to the purpose and intent of the people who used this language, and my argument is that because they did provide that there should be the same payment for ships of war and that the conditions should be the same for these instruments of battle as are provided for the ships of commerce, therefore it was not in the minds of the men who made the agreement that we should charge our shipping the same as we charge other shipping.

We all agree, do we not, that it would be legally impossible for the United States to charge for the transmission of our ships of war through this canal? If there is a Senator here who can tell me how it can be done, I will be obliged to him. I say that it is legally impossible for the United States to pay itself for the passage of one of its warships through this canal. It is contrary to the fundamental principles of the law which applies to that subject. A man can not pay himself. A nation can not pay itself. If this Nation were to pay \$5,000 for the passage of the *Oregon* through the canal, to whom would it pay it? It would pay the United States, and that is no payment at all. Therefore is it not entirely clear that those who used this language did not intend that the United States should be among those nations that were to pay the same for their ships of war and ships of commerce?

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Mr. President, the absurdity of requiring the captain of a war vessel to pay the tolls into the Treasury of the United States, and the absurdity of calling that a payment, would be duplicated in commerce.

The United States now owns, I believe, eight ships that ply between New York and Colon. The United States is directly engaged in commerce. I know that there intervenes the form of a corporation known as the Panama Railroad & Steamship Co., but that is a mere shadow. It does not touch the substance of the matter.

Suppose that after this canal is finished these 8 ships, with 8 more or 20 more that the United States may buy or build, shall enter the carrying trade between New York and San Francisco or New York and Valparaiso, or New York and any other port on the western shore. There is no reason why it should not be done, and indeed I am wholly in favor of doing it if the opportunity does not attract private enterprise.

We intend to have competition through that canal; and if by any mischance competition by water is destroyed or fails to appear, then the United States will be carrying commerce between our eastern and our western shores. And let me ask whether that is a contingency that was not present in the minds of the men who made this treaty? The other nations of the world are engaged in transportation. The other nations of the world have gone into the business of common carriers. Why should not the United States go into that business? It is the tendency of the times, as was known to every person who had anything to do with the negotiation of this treaty. And yet if that contingency was in the minds of the men who made this treaty, tell me how these ships that belong to the United States and are carrying commerce from one shore to the other can pay the United States for passage through the canal? As I said a moment ago, those who are standing for the interpretation that excludes this power of the Government will recoil from that interpretation when they face the fact that, carried to its logical end, it substantially forbids the United States to enter this trade. And if that be the interpretation, then we have agreed with Great Britain that never will we charter a ship and send that ship for commercial purposes through the Panama Canal.

The conclusion is so absurd—and it is not more absurd than it is dangerous and startling—that the American people will not endure any interpretation of this treaty that will preclude the exercise of their power to send their own ships, both in commerce and for war, through the canal; and they can not send either through the canal if the interpretation insisted upon here is to be the accepted construction of our agreement.

I think we ought to hesitate a long while before we agree that we have surrendered to Great Britain or to the rest of mankind any such power as I have described.

But that is not all. I suppose you all agree with me that as to the citizens of Great Britain, for instance, the United States could not discriminate as between them. Is there anyone here who dissents from that proposition?

The United States could not discriminate between citizens of Great Britain or France or Germany or Italy or any other nation with regard to their traffic through the canal. We have agreed we would not discriminate between their citizens. We have agreed that we would give them all an even opportunity, and we would allow them all to enjoy the same conditions. If this is to bear the construction which has been put upon it, then we have agreed that we will not discriminate among our own citizens with regard to traffic in the canal. If this be true, we can not send our coastwise ships through the canal at one charge and our ships engaged in the foreign trade subject to another charge. We have agreed in this purely domestic matter, a thing over which Great Britain has no more control and over which she ought not to have any more control than she has over the policies of heaven, and yet we have surrendered it to Great Britain, and we have given to the courts of Europe and of Africa and of Asia the right to say what we shall do between our own people as to this shipping.

I can not think that when the full depth of the sea upon which these men who contend for the other interpretation of the treaty is measured that there will be many who will desire to embark upon that sea.

But that is not all. It has been said here more than once that this interpretation not only does not give us equality, but it imposes upon us clear inferiority. There is not a lawyer, there is not a layman here, there is not a man of observation and sense, who will not agree that this subterfuge of paying tolls into the Treasury of the United States and having those tolls, by a law made theretofore, returned at once to the ships that paid them is unworthy of a great Nation like ours. It would be unworthy of an individual. It would be unworthy of anyone who values substance and does not promote form above the reality. We can not, if we have agreed that there shall be no discrimination by any form, in any form, at any time, return these tolls to the ships which paid them.

We could do that if there was no understanding beforehand. If there was no law beforehand for the return of the tolls, then it might not be subject to the criticism I have suggested; but if we pass a law that all American ships passing through the canal shall pay these tolls, and thereafter the Treasurer of the United States shall return to the ship the tolls so paid, we will have violated this treaty, under the interpretation given to it by some of my brother Senators, just as completely and just as certainly as if we were now to pass a law that no tolls at all should be charged; and, besides having violated the treaty, we would have exposed ourselves to the contempt of the whole world for endeavoring to do indirectly a thing that we had not the courage to do directly; and whatever else we may do, let us at least preserve a reputation for doing whatever we do openly, so that all the civilized nations may understand just what we are doing.

But that is not all. England will return to her ships the tolls that we impose, France will, Germany will, and probably all the nations of Europe will, and yet we will be tied by a construction of the treaty which, I think, does as much violence to its language as it does violence to the fundamental rights of American citizens. We can not escape from the situation into which we have been forced by a failure to boldly assume in the beginning that this treaty means what it says, what it must have meant in the minds of those who framed it, on account of the considerations to which I am now calling your attention.

But again, charges are no more required to be equal by this treaty than conditions. The conditions must be the same. Let me ask the Senator from Ohio [Mr. BURTON], who is to answer me, what he thinks of this case: Suppose the United States should erect docks in the harbor of Cristobal and Balboa, docks in the entrance of this canal for the accommodation of American shipping? He will contend, I assume, that we can erect no dock there that is to afford a facility for an American citizen or an American ship but which must be equally open to a foreign citizen and to a foreign ship. We must not only give to these nations the benefit of all that we have already expended, but we must be willing to give to them the benefit of all the money that we hereafter will expend in order to encourage and stimulate and convenience our own shipping. If there

is any difference between conditions and charges I hope that those who follow me will be able to point it out.

Not only so, we have a bill here which imposes a condition upon American ships that is not imposed on foreign ships. I want you to put away your varying opinions with regard to the merits of the proposition; I want you to look at it only to inquire whether it is within our power. This bill proposes that no American ship in the coastwise trade shall pass through the canal if it be controlled by a railway company. I should like to know of my friends upon the other side whether they think that is within the terms of the treaty. Have we violated our engagements with Great Britain when we have imposed upon our own shipping a condition of this character? According to the construction of those who would surrender this power we have violated it. We can not say as to our own shipping that it must be free and independent, unless we say it as to the whole world.

We have no more agreed that charges shall be the same than that conditions shall be the same. I want to know whether there is a Senator here or whether there is a man who loves his country within the borders of the United States who will be willing to accede to the suggestion that we have not the power to impose that condition upon our shipping.

I might pursue this thought indefinitely. I have not suggested these things to Congress in order to escape from any obligation that it has assumed. I for one am willing to bear the burden, whatever it may be, but I am not willing that Great Britain shall say what that burden is. I have mentioned these things in order to convince all of you that when this treaty was being made it is utterly impossible to conceive that our Secretary of State and our President and our other advisers had in mind or could have had in mind that all the charges and all the conditions of trade through the canal should be the same as to foreign and domestic shipping.

I repeat the one thought, and that is that we have engaged with Great Britain and through Great Britain with the whole world that this canal shall be open in war as well as in peace, and that we will not impose upon the trade of the world other conditions or other charges than those which are fair and equitable under all the circumstances which surround trade and commerce.

But I take one step further. The Senator from North Dakota said in a tone of triumph the other day that it was plainly evident from the second paragraph of article 3 that all these obligations had been assumed by the United States, and that it was and is one of the nations included in the phrase so often quoted, and he read, "The canal shall never be blockaded nor shall any right of war be exercised nor any act of hostility be committed within it."

I want those Senators who are experienced in the language of diplomacy and especially experienced in the terminology of war to tell me what a blockade is. I may be wrong, but as I understand it the blockade of a port is the intervention of ships of war so stationed that commerce can not enter the port. It is a measure that is adopted by one power against another with which it may be at war.

Tell me if you will whether our distinguished Secretary of State, if he had desired to say that the United States shall keep this canal open for commerce, would have said the United States shall not blockade this canal? It is impossible to conceive of the use of those words, if that be the intent. The United States could not blockade this canal any more than it could blockade one of its own ports of which it was in full possession. The United States is in possession of the Panama Canal; in possession of its 10-mile territory that adjoins it; in possession of its locks; in possession of every facility that makes it usable by the commerce of the world. If the United States desired to arrest the operations of the canal and prevent commerce from passing through the canal, it would not blockade the canal. It could, by the turning of a screw, destroy the canal for use in a commercial way or in a warlike way either. Without its will not a single ship could pass through the canal.

Therefore, will you say to me that when John Hay was using the language here employed he intended to say that the United States should never blockade the canal? No; he said the canal should never be blockaded, and it is for us to see that it never shall be blockaded. We have agreed to maintain the canal so that it can be used by all the world, and if any nation shall attempt to prevent the ingress or the egress of vessels through the canal upon peaceful errands

it is the solemn obligation of the United States to see that that effort does not succeed and that there shall be no blockade of these waters.

Again, if it was intended by the distinguished Secretary of State that his own country should be one of the nations upon which all these rules are to rest, then we are one of the belligerents mentioned in the other paragraphs of the rule. The third one reads thus:

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service.

Neutralization does not involve the provision which I have just read so far as occupation by the United States is concerned.

I repeat, as I have said often, we have undertaken that these waters shall be open for the commerce of the world. I can easily understand the application of that rule. If Great Britain were at war with France these are then neutral waters. The ships of neither would be allowed to remain longer than the appointed time in or near the canal. Neither of the ships would be permitted to take on other stores than the laws of war permit, and the treaty becomes intelligible and can be executed with honor and for the welfare of all the people.

But suppose that the United States is one of the belligerents; we have a territory there 10 miles wide and a canal through it. We have acquired the one and constructed the other at immense cost, and the sovereignty of the United States is supreme over both. Do you think that any representative of the Government of the United States has ever agreed that under those circumstances a canal so built, with a sovereignty so exercised, that one of our own ships of war, when this Nation is a belligerent, must hasten through this canal, taking no other provision than would be allowed to a foreign ship and leaving it defenseless, if you please, against the belligerent with which we might be at war?

If any Secretary of State ever so dreamed it must have been at a time when he had forgotten all the traditions of the race to which he belonged, and if any Congress ever decides and proclaims that the United States can not use this canal for her ships of war when her life is at stake, that Congress will go down in history under the universal detestation of a liberty-loving land.

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Finally, I desire to read another paragraph of the treaty:

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than 24 hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within 24 hours from the departure of a vessel of war of the other belligerent.

This reading simply intensifies the observations I have already made with respect to the canal. Is there an American anywhere who believes that we ever agree in time of war to treat our ships and our men and the means for our safety in the way pointed out in this treaty? The statement of the case is the best argument that I can make upon it.

I hope, of course, that war will never come. I am not saying these things because I believe it is imminent. I am saying them to test the mind of the man who made this agreement for the United States, and I am saying them for the purpose of removing any doubt that may be in the Senate in regard to what was intended by this treaty.

We will do injustice to his memory if we attach to him the imputation of having surrendered to Great Britain or to the world these priceless, these invaluable rights for the maintenance of our dignity and the preservation of our safety. I for one will not believe that he ever intended to commit the American Government to a course so perilous and as I was about to say, so weak and so cowardly.

I desire to fulfill the treaty according to its letter and its spirit as well, and I regret more than I can express that these differences of opinion have entered the minds of Senators. It seems to me that we ought to stand as one man for a construction of this treaty which is not only demanded by its terms but by every consideration of national safety and honor as well.

**FROM SPEECH OF HON. WESLEY L. JONES, OF WASHINGTON, IN
THE SENATE OF THE UNITED STATES AUGUST 6, 1912.**

Mr. JONES. Mr. President, the United States owns a strip of territory across the Isthmus of Panama 10 miles wide. It is ours by grant from the Republic of Panama; no one disputes our title and no one can dispute it. Over it flies the flag of the Republic representing the sovereignty and proprietorship of the Nation just as it represents that sovereignty and proprietorship over any other territory belonging to the United States. We have established a government. Order is maintained; our courts administer justice; civil rights are enforced, and all the rights and powers of sovereignty are being exercised.

Through and across this strip of territory, and wholly within its limits, we are building with our people's money, and will soon have completed, a great canal through which will pass much of the world's commerce. * * *

Some contend, however, that although we bought the territory, built the canal, and own them both, we must use the canal for the benefit of others and to the disadvantage of ourselves and our own people. Is this so? Can we exercise only those rights of a sovereign and of a proprietor that benefit other nations at the expense of our own people and deny them the privileges and benefit which every sovereign and proprietor ordinarily can extend to his own? If I believed that we were limited in our treatment of our own people and our own vessels, as some have contended, I would not discuss the question in open session, but if I felt compelled to advocate such a position, I would do it only in executive session, where no record would be made that could be used against our Government and people in any controversy that may hereafter arise. I do not say this in criticism of those who have publicly discussed and advocated this side of the controversy, but simply as expressing my own views as to the proper action to take. In any controversy that may arise between our Government and a foreign power, where there is room for doubt I will never admit that my Government is in the wrong except within the secret walls of this historic Chamber.

In my judgment, however, we can use this territory and this canal just as we can use any other territory or any other waterway of the country. We can permit our ships and our people to use it and occupy it just as we permit them to use any of our other waterways or territory. This is denied, however, because of a treaty between this Government and Great Britain, under which it is claimed that we can not permit our own people to use this canal except upon exactly the same terms that we allow the people of Great Britain and other nations to use it. The American people are jealous of their rights, but they also hold sacred their promise.

However unfair and however burdensome any treaty solemnly made and ratified may be, it will be sacredly kept until abrogated, and I yield to no one in upholding at any cost the Nation's honor.

Is there any treaty that restricts our power to permit the use of this canal by our own people upon such terms as we see fit to impose? Could any treaty be made that limits and restricts the power and right of the Government to deal with its own people and its own property? In my judgment the treaty-making power can not take away or cede away this right. The Senate and the President can not deprive the United States of any of its rights of sovereignty, and that is what this would be doing. If it be said that this is not ceding away sovereign rights, but it is giving or granting proprietary rights, I say this can not be done by the President and the Senate in the exercise of the treaty-making power. The right to use our canal and the territory through which it runs as we may desire is a property right, and the establishment of rules respecting the use of this canal is the establishment of rules in respect to the property or territory of the United States, and under section 3, Article IV, of the Constitution only "the Congress," and not the Senate and the President, "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Any treaty purporting to make rules and regulations respecting that canal or the territory through which it passes and purporting to restrict its use by the United States is beyond the power of the President and the Senate and not binding upon the Government or the people of the United States. It will not be presumed that an attempt was made to do what there was no constitutional power to do.

Does the Hay-Pauncefote treaty assume to deprive us of our right to deal with and treat our own ships in the use of our own canal as we deem best? I do not think so. Surely, no one will contend that the President and Mr. Hay, who negotiated that treaty, and the Senate, which ratified it, intended to give up our right to allow our own ships to use our own canal and our own territory as we might deem best. They were patriotic men, devoted to the welfare of our country and jealous of its rights and the rights of its citizens, and I will not believe that they intended anything of the sort. If the people of this country believed that they intended to give up such rights, no words could express their indignation, and such a deliberate intention would be regarded as little short of faithlessness to the great trust reposed in them. If they had thought so when this treaty was pending, such a wave of indignation would have swept the country as would have buried such treaty in oblivion. I am sure, and the people believe, that they simply agreed that the United States would treat all nations with absolute impartiality, and insure equal treatment among them without depriving itself of any of its sovereign or proprietary rights and without recognizing the right of any people to interfere or question its treatment of its own people in regard to its own property and territory.

Ever since Balboa stood on the crest of the Cordilleras at the Isthmus of Panama and gazed upon the placid waters of the Pacific the people of the world have dreamed of a canal across the Isthmus connecting the two oceans. From the independence of the Spanish-American Republics the American people have interested themselves in this great undertaking. In 1835 the Senate instructed the President to enter into negotiations with the Governments of Central America and New Granada, with the view of affording protection to individuals or companies proposing to construct such a canal and to insure the free use and navigation of it to all nations. The Nicaragua route came into favor, and franchises were secured by various parties looking to the construction of such canal through Nicaraguan territory. Prior to 1850 Great Britain asserted a claim to a protectorate over the Mosquito coast country. Gold was discovered in California, and renewed interest in the canal was taken by the United States. In 1850 the Clayton-Bulwer treaty was made and ratified.

This treaty, by express terms, had reference only to the canal to be constructed "by the way of the River San Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua to any port or place on the Pacific Ocean," but it recognized in the eighth section the possibility of the construction of such canal by way of Tehautepec or Panama. This treaty did not contemplate the construction of the canal by either Government, but, on the contrary, expressly declared that neither the United States nor Great Britain "will ever obtain or maintain for itself any exclusive control over the said ship canal." No fortifications were to be erected or maintained by either Government in connection with or in the vicinity of the canal, nor was either Government to acquire any rights or advantages for itself or its citizens in regard to commerce or navigation through the said canal not enjoyed by the other. Both Governments obligated themselves to protect any persons constructing the canal from "unjust detention, confiscation, seizure, or any violence whatsoever."

Article 5 of this treaty reads as follows:

The contracting parties further engage that when the said canal shall have been completed they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal and guaranteeing its neutrality and security when completed, always understand that this protection and guaranty are granted conditionally and may be withdrawn by both Governments or either Government, if both Governments or either Government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other or by imposing oppressive exactions or unreasonable tolls upon the passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guaranty without first giving six months' notice to the other.

In other words, the United States and Great Britain guarantee the neutrality of any such canal, but such neutrality and equal use are granted conditionally upon equal obligations, and either Government might withdraw from such obligations if those managing the canal should make "unfair discrimination" or impose "oppressive exactions or unreasonable tolls."

It will be noted that under article 5 the United States and Great Britain simply provide for securing fair and equal treatment to themselves by those operating the canal. In order, however, that other nations might have the benefit of the canal upon equal terms, but also with equal obligations, article 6 obligated the contracting parties "to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated."

Article 8 is as follows:

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the Isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

This, in brief, is the Clayton-Bulwer treaty made in 1850. It is not worth while here to discuss why any recognition was given, if given, to the claims of Great Britain in Nicaragua or the Mosquito Coast country contrary to the Monroe doctrine. Nothing was said concerning such claims in this treaty, but it did recognize for some reason or other Great Britain's interest in the construction of a canal connecting the two oceans, and Great Britain and the United States assumed equal obligations in relation to such canal and were to receive equal treatment. The canal was to be constructed through territory foreign to both of these Governments, and was to be constructed by private parties or companies. Both nations were desirous that such canal should be constructed and were anxious to further such construction in every way possible. The object of this treaty was to promote the construction of the canal by encouraging, assisting, and protecting those who were engaged in the great enterprise and to insure its neutrality wherever located and to guarantee equal treatment by those operating the canal to all nations entering into stipulations similar to those between Great Britain and the United States. The treaty was entered into "to accomplish a particular object"; that is, the construction of a canal connecting the waters of the two oceans, and also to establish "a general principle"; that is, that such canal, wherever constructed, should be a neutral canal as among all nations entering into stipulations similar to those agreed to between Great Britain and the United States.

After the ratification of the Clayton-Bulwer treaty various steps were taken and various enterprises inaugurated looking toward the construction of this canal. In June, 1867, after the close of the Civil War, a treaty was concluded between the United States and Nicaragua by which the citizens of the United States were to have free transit over any canal constructed under the authority of the Government of Nicaragua. From 1872 until 1882 almost every possible route across the Isthmus was surveyed by engineers of the United States Navy, and in 1876 a report favoring the Nicaraguan route was made by a commission of military and naval engineers appointed by President Grant in compliance with a Senate resolution. An international congress held at Paris in 1879 decided in favor of the Panama route. In 1884 a treaty was concluded between the United States and Nicaragua by which the United States was to build the canal, to be owned jointly by the two powers. This treaty was never ratified. De Lesseps's attempt to construct the canal at Panama had been a disastrous failure. In 1887 a Nicaragua Canal Association secured from Nicaragua a concession granting the exclusive privilege of constructing and operating a canal. Surveys were made and the line of the canal definitely fixed, and in 1889 Congress granted a charter of incorporation to the company. After the expenditure of about \$2,000,000 operations ceased in 1893, owing to the lack of funds and the failure of Congress to guarantee the bond issue. Congress provided for various commissions to report upon the feasibility and cost of constructing a canal through Nicaragua, and these commissions reported favorably upon the Nicaraguan route and made an estimate of the cost of the same,

In the meantime an international commission of experts made a report upon the feasibility of constructing the canal across the Isthmus of Panama and the whole matter was submitted in 1889 to a new commission provided by Congress, which, after a very exhaustive investigation of all the routes, recommended the Nicaraguan route simply on account of the financial difficulties in the way of acquiring the property of the Panama Canal Co. These difficulties were eventually overcome, and Congress finally adopted the Panama route with the understanding that the Nicaraguan route should be reverted to in case a satisfactory title could not be secured to the Panama property and the necessary concessions from the Government of Colombia.

The Nicaragua Canal Association ceased its operations in 1893, and any hope that had existed of any private parties or company constructing this canal was dissipated, and it was generally accepted that if the canal was to be built, it would have to be done by the United States or by some company or association supported by the United States. The people were insistent that the canal be built and, as I already have said, various Government commissions had made investigations and reports and recommendations. There was no thought of the United States acquiring territory across the Isthmus, but negotiations were had looking to concessions to the United States under which the canal might be constructed through the countries granting such concessions.

While but little attention had been paid to the Clayton-Bulwer treaty, it had never been formally abrogated. Under that treaty the Governments of the United States and Great Britain had declared that neither would "ever obtain or maintain for itself any exclusive control" over any canal constructed across the Isthmus. It had become evident that the United States must construct the canal or guarantee its construction, and in so doing it would be necessary for it to have exclusive control over it. The abrogation of the Clayton-Bulwer treaty was sought by the United States. That treaty, if it amounted to anything, was solely a hindrance to the construction of the canal. It was of no benefit to England, whose pretensions to the Mosquito coast and Nicaragua at the time had long since lapsed. In consenting to its abrogation England gave up nothing except the pretext of obstructing the building of the canal by the United States if it desired to do so. While some contend that Great Britain made or gave up valuable concessions in the abrogation of the Clayton-Bulwer treaty, and while they may be right, I can not myself agree to this. At any rate, the Clayton-Bulwer treaty was expressly abrogated by the treaty of November 18, 1901, transmitted by President Roosevelt to the Senate December 4, 1901, and ratified December 16, 1901, by a vote of 72 yeas and 6 nays. This treaty is known as the Hay-Pauncefote treaty.

This treaty was expressly declared in its preamble to be for the purpose of facilitating the construction of the canal to connect the Atlantic and Pacific Oceans by whatever route might be considered expedient and "to remove any objection which may arise out of the convention of the 19th of April, 1850, commonly called the Clayton-Bulwer treaty, and the construction of such canal under the auspices of the Government of the United States, without impairing the 'general principle' of neutralization established in article 8 of that convention." This treaty expressly superseded the Clayton-Bulwer treaty.

Article 2 of this treaty reads as follows:

It is agreed that the canal may be constructed under the auspices of the Government of the United States either directly at its own cost or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

From this it will be seen that the United States was at liberty, without any possible objection upon the part of Great Britain, to proceed with the construction of the canal directly at its own cost or by gift or loan to individuals or corporations or through subscription to or purchase of stock or shares. Great Britain was relieved of any and all obligations in connection with the construction of the canal and from all obligations for the protection of anyone constructing the canal. She also was relieved from any obligation whatever to protect the canal when constructed or in guaranteeing its neutrality.

The only provision of the Clayton-Bulwer treaty that was retained was the "general principle" of neutralization established in article 8 of that convention, and that "general principle" was that the canal should be open on equal terms to all nations having equal obligations in connection with the canal; and, as the United States assumed all the obligations in connection with the con-

struction, maintenance, operation, and protection of the canal, this "general principle" simply meant that under this treaty the United States was to give all other nations equal terms in connection with the use of this canal.

Those contending that this canal under the Hay-Pauncefote treaty must be open to vessels of all nations, including the vessels of the United States, on equal terms, it seems to me, overlook the essence of the "general principle" set forth in section 8 of the Clayton-Bulwer treaty, as well as that the canal "shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford." Keeping this in mind as the essence of the "general principle" referred to, it seems to me to be absolutely conclusive that under the new treaty the only obligation placed upon the United States by this "general principle" was that the other nations of the world and their citizens should be treated exactly alike in the use of the canal.

It is significant in this connection that the original draft of the Hay-Pauncefote treaty, as transmitted to the Senate by President McKinley, obligated Great Britain as well as the United States to maintain the neutralization of the canal under certain rules prescribed in the treaty, and article 3 provided as follows:

The high contracting parties will immediately upon the exchange of the ratifications of this convention bring it to the notice of the other powers and invite them to adhere to it.

This provision was stricken out in the Senate. In view of the fact that England had bound herself to neutral conduct in connection with the canal, she objected to the release of other nations from these obligations.

In connection with the negotiations with reference to the action of the Senate in striking out this article, Lord Lansdowne submitted a memorandum, under date of August 3, 1901, wherein he said:

The omission of the article inviting the adherence of other powers placed this country in a position of marked disadvantage compared with other powers, while the United States would have a treaty right to interfere with the canal in time of war or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention of 1900, Great Britain alone would be absolutely precluded from resorting to any such action or from taking measures to secure her interest in and near the canal.

While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent rules of neutral conduct not equally binding upon other powers. I would, therefore, suggest the insertion in rule 1, after "all nations," of the words "which shall agree to observe these rules." This addition will impose upon other powers the same self-denying ordinance as Great Britain is desired to accept and will furnish an additional security for the neutrality of the canal, which it will be the duty of the United States to maintain.

It will be noted that Great Britain did not feel that she should be bound to neutral conduct in regard to the canal unless other nations also were so bound. This, as I have said before, was the very essence of the "general principle" contained in section 8 of the Clayton-Bulwer treaty.

In regard to the suggestion made by Lord Lansdowne that the canal should be free and open to all nations observing the rules adopted by the United States and Great Britain, Mr. Lowther, in a communication of September 12, 1901, said:

With regard to the changes suggested by His Majesty's Government, Mr. Hay was apprehensive that the first amendment proposed to clause 1 of article 3 would meet with opposition because of the strong objection entertained to inviting other powers to become contract parties to a treaty affecting the canal. If His Majesty's Government found it not convenient to accept the draft as it stood, they might perhaps consider favorably the substitution for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules" the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and instead of "any nation so agreeing" the words "any such nation." This, it seemed to Mr. Hay, would accomplish the purpose aimed at by His Majesty's Government.

To this Lord Lansdowne replied, under date of October 23, 1901:

Mr. Hay has suggested that in article 3, rule 1, we should substitute for the words "the canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules," etc., the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and in the same clause as a consequential amendment, to substitute for the words "any nation so agreeing" the words "any such nation." His Majesty's Government were prepared to accept this amendment, which seemed to us equally efficacious for the purpose which we had in view, namely, that of insuring that Great Britain should not be placed in a less advantageous position than other powers, which they stopped short of conferring upon other nations a contractual right to the use of the canal.

Article 2 of the original treaty transmitted to the Senate by President McKinley contained this paragraph:

The high contracting parties, desiring to preserve and maintain the "general principle" of neutralization established in article 8 of the Clayton-Bulwer convention, which convention is hereby superseded, adopt as the basis for such neutralization the following rules, substantially as embodied in the convention between Great Britain and certain other powers, signed at Constantinople October 29, 1888, for the free navigation of the Suez Maritime Canal, that is to say:

In line with the suggestions above referred to, in the final draft of the treaty as sent to the Senate by President Roosevelt, and which was finally ratified, this paragraph reads as follows:

The United States—

Not the United States and Great Britain, but the United States—

adopts as the basis of the neutralization of such ship canal the following rules, substantially as embodied in the convention of Constantinople, signed the 28th of October, 1888, for the free navigation of the Suez Canal; that is to say.

In the memorandum submitted by Lord Lansdowne of August 3, 1901, referring to this change, he says:

In form the new draft differs from the convention of 1900, under which the high contracting parties, after agreeing that the canal might be constructed by the United States, undertook to adopt certain rules as the basis upon which the canal was to be neutralized. In the new draft the United States intimate their readiness "to adopt" somewhat similar rules as the basis of the neutralization of the canal. It would appear to follow that the whole responsibility for upholding these rules, and thereby maintaining the neutrality of the canal, would henceforward be assumed by the Government of the United States. The change of form is an important one; but in view of the fact that the whole cost of the construction of the canal is to be borne by that Government, which is also to be charged with such measures as may be necessary to protect it against lawlessness and disorder, His Majesty's Government are not likely to object to it.

From these negotiations and from the nature of this treaty as compared with the Clayton-Bulwer treaty it is clear that Great Britain recognized that the "general principle" of section 8 of the Bulwer treaty under the new treaty simply imposes upon the United States the obligation to treat all the other nations of the world equally and without discrimination in the use of the canal. The United States was not only to build the canal or to see that it was built, but the United States alone was obligated to protect it and to maintain its neutrality. England was relieved of all obligations and responsibilities, as well as other nations.

That construction is also borne out by the treaty negotiated between this Government and the Government of Colombia after the Hay-Pauncefote treaty was entered into. In article 17 of that treaty it is provided that the vessels, troops, and munitions of war of Colombia shall go through the canal without charge. It reads:

The Government of Colombia shall have the right to transport over the canal its vessels, troops, and munitions of war at all times without paying charges of any kind. This exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Colombia or of the Department of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war, and supplies.

Why was that provision put in the treaty with Colombia? I believe it was placed there because under article 23 it was the duty of Colombia, in case there was trouble on the canal, "to provide the forces necessary for such purpose." Article 23 reads:

If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and other works, the Republic of Colombia agrees to provide the forces necessary for such purpose, according to the circumstances of the case; but if the Government of Colombia can not effectively comply with this obligation, then, with the consent of or at the request of Colombia, or of her minister at Washington, or of the local authorities, civil or military, the United States shall employ such force as may be necessary for that sole purpose; and as soon as the necessity shall have ceased will withdraw the forces so employed. Under exceptional circumstances, however, on account of unforeseen or imminent danger to said canal, railways, and other works, or to the lives and property of the persons employed upon the canal, railways, and other works, the Government of the United States is authorized to act in the interest of their protection, without the necessity of obtaining the consent beforehand of the Government of Colombia; and it shall give immediate advice of the measures adopted for the purpose stated; and as soon as sufficient Colombian forces shall arrive to attend to the indicated purpose those of the United States shall retire.

That is for the purpose of preserving peace and order and protecting the canal. So that was in line with the general principle of the Clayton-Bulwer

treaty that the nations with equal obligations should be treated equally with reference to the use of the canal.

Mr. REED. Mr. President—

The PRESIDING OFFICER (Mr. SIMMONS in the chair). Does the Senator from Washington yield to the Senator from Missouri?

Mr. JONES. Certainly.

Mr. REED. If the view so often expressed here by Senators is correct, that our Government can not permit the free use of the canal by our own vessels or vessels flying our flag because it is barred from so doing by the clause of the treaty providing that all nations shall have the equal use of the canal, giving to that clause the construction that the expression "all nations" includes the Government of the United States, does not the Senator think that that same clause would have barred us from making the treaty we did make with the Government of Colombia, and have we not already violated it?

Mr. JONES. I think so, Mr. President. By no possible construction can it be held that the United States would be violating the "general principle" by giving a preference to her own citizens and vessels in the use of the canal constructed under her "auspices." On the contrary, such preference is expressly authorized by this "general principle," as under it Great Britain and the United States were not bound to allow the use of such canal on equal terms to any except those who would join with them in affording protection to the canal or those who would assume equal obligations with the United States and Great Britain.

It is contended, however, that rule 1 of article 3 prohibits us from giving any preference to our own ships. It must be borne in mind that the rules adopted as the basis for the neutralization of the canal are rules adopted by the United States to insure the neutralization of the canal. It seems to me that in the discussion of this provision in the treaty that point is overlooked. We simply quote the language of the rule itself without quoting the preamble to it, that it is a rule adopted by the United States. They are not rules adopted for the United States or to govern the United States, but they are rules adopted by the United States to be observed by other nations in the use of the canal consistent with its neutrality.

The United States says, not to herself but to the nations of the world, "You may use this canal if you observe these rules."

Rule 1 is as follows:

The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

The canal shall never be blockaded, nor shall any right of war be exercised, nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

It is plain to me that this rule refers to nations other than the United States. The United States stands on one side as the maker of these rules. The other nations of the earth are those who stand on the other side and who are to observe the rules and for whose observance the rules are made. This is the natural and ordinary construction to give to this language in connection with the preceding declaration that the "United States adopts" these rules.

The owner of a ferry promulgates rules for the use of his ferry to be observed by his passengers, not by himself, and when he says that "all persons observing these rules may pass his horses and cows over this ferry" no one would understand that the term "all persons observing these rules" includes himself and that he would charge himself for crossing his horses and cows on the ferry. If the owner of certain lands puts up a sign "All hunting on these premises is prohibited," no one would contend that he could not hunt thereon. So it is with the language of this rule.

It is a rule made by the United States for and under which all other nations or "all nations," if you please, "observing" the rules shall be admitted to the use of the canal, so that when the United States says that the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, it is the same as the ferryman saying that "all persons paying him 25 cents" will be transported across the stream on which his ferry operates, and there is nothing in the world that makes it a discrimination against any of these nations to permit our vessels to go through the canal free, while

they pay, any more than it would be for the ferryman to carry himself across without charge.

This rule simply says that all those nations observing the rules laid down by the United States will be treated without any discrimination the one against the other. This is in harmony with the "general principle" contained in section 8 of the Clayton-Bulwer treaty. The United States is the only nation upon which any obligations are imposed in connection with the construction, operation, protection, and maintenance of the canal. All other nations are free from any obligations of any kind, and according to that "principle" the nations without obligations are to be treated alike, while the nation with obligations may receive different treatment.

It seems to me that there is no room for argument and no room for construction. The language is plain and the meaning is clear, and there is not an American citizen with average intelligence who will take any different view as to the obligations and as to the rights of the United States in this respect. While the meaning of this article and of this rule must be arrived at from the language used, the construction that I have given to it is confirmed by what would result from any different construction. If we are to hold that the United States can show no preference to its own vessels, then we must say to the people of this country that their money has built the canal; they must maintain it and operate it at their own expense; they must protect it from disorder, from lawlessness, and from damage; they must maintain its neutrality at the possible expense of much blood and treasure; and, notwithstanding all this, the vessels of war of the United States can not go through the canal except upon the same conditions, with the same restraints, and the same charges which the vessels of war of any other nation must bear and pay, and that the vessels of citizens of the United States can not go through the canal without paying the same charges that are paid by the vessels of the citizens of other countries who have no obligations and who have been to no expense in connection with the canal. If any other construction is advocated, we must admit to our people that the President of the United States, who made this treaty, and the Senators who ratified it, had no regard for the rights and interests of the people of the United States in framing this treaty. This I will not admit.

A further examination of these rules makes it certain that they were adopted by the United States for the observance of other nations. It is said that the canal "shall never be blockaded." The United States would never blockade its own canal or the canal or ports within its control. This can mean nothing except that the canal shall never be blockaded by nations other than the United States; in other words, by "those observing these rules."

Again, it provides that "vessels of war of a belligerent shall not revictual, except so far as may be strictly necessary, in the canal." Does anyone suppose for a moment that a war vessel of the United States going through the canal could not revictual to any extent desired, even though the United States might be at war with some other nation? Is it possible that there is territory under the Stars and Stripes in which our war vessels can not stop to revictual? I can not think so. Our people will never admit it.

It is further provided that "the transit of such vessel through the canal shall be effected with the least possible delay in accordance with the regulations in force and with only such intermission as may result from the necessities of the service."

This clearly refers to nations at war with nations other than the United States. The regulations in force would be regulations made by the United States for the purpose of governing the passage of ships of belligerent nations through the canal. It is ridiculous to suppose that a war vessel of the United States would have to pass through the canal any more rapidly or expeditiously than the United States itself would desire.

Again, it is provided "no belligerent shall embark or disembark troops in the canal." It also is provided in rule 5 that—

Vessels of war of a belligerent shall not remain in such waters—

Referring to waters adjacent to the canal, within 3 marine miles of either end, and which are owned by the United States—

longer than 24 hours at any one time, except in case of distress, and in such case shall depart as soon as possible.

Were these rules made to apply to vessels of the United States? Must our war vessels leave our own territory within 24 hours? If so, where will they go? It is too plain to admit of argument that these rules were not made by the United States to govern themselves, but were made to be observed by the nations that were to use the canal on terms of equality. It is unthinkable that we would agree to a treaty that required our warships to leave our own territory within 24 hours, and yet that is what we have done if any other construction is given to this treaty.

Mr. BRISTOW. Mr. President, referring to the matter of the landing of troops, the Senator is aware, of course, that, as a matter of fact, we are now constructing barracks and expect to maintain on the Isthmus and along the canal some two or three thousand American soldiers all the time.

Mr. JONES. Certainly; and we expect and have voted to fortify the canal, and England has not made any objection.

Mr. MASSEY. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Nevada?

Mr. JONES. Certainly.

Mr. MASSEY. I merely want to interject the remark that we are fortifying it for offensive and defensive purposes, so far as this Government is concerned.

Mr. JONES. Certainly; we are dealing with it just as if it were our own, as indeed it is.

Mr. POMERENE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Ohio?

Mr. JONES. Certainly.

Mr. POMERENE. Mr. President, the Hay-Pauncefote treaty was made before we acquired title to the Panama strip. The Senator's position, as I understand, is that we have the right to fortify the canal and to blockade it, as we see fit.

Mr. JONES. We have the right to do with it as we please. The provision against blockading does not apply to the United States, because no Government would blockade its own ports.

Mr. POMERENE. Very well. In other words, we have the right to control it. When the Hay-Pauncefote treaty was before the Senate for consideration, the Senator from Texas [Mr. CULBERSON] offered the following amendment:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections Nos. 1, 2, 3, 4, and 5 of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

I take it there is nothing in this proposed amendment which would be inconsistent with the position now taken by the Senator from Washington. It certainly would have added to the clearness of the contention which the Senator is now making. Can the Senator explain why, in view of at least a certain amount of obscurity which there is in the treaty, this proposed amendment was defeated?

Mr. JONES. Mr. President, I do not concede that there is any obscurity in it. It is just as plain to my mind as it is now worded as it would be with that language in it. I have no doubt that those amendments were voted down by the Senate on the theory that the treaty was plain and that we had that right already, just the same as in the matter of fortifications.

Mr. O'GORMAN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from New York?

Mr. JONES. Certainly.

Mr. O'GORMAN. Confirming the view of the Senator from Washington, the statement has been made repeatedly during the discussion of this bill that the amendment referred to by the Senator from Ohio [Mr. POMERENE] was voted down at the time under the belief that there was no need of amplifying the language of the treaty; that the treaty as it stood was susceptible only of the interpretation that is now being argued for by the Senator from Washington.

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Mr. JONES. Mr. President, it seems to me it would be a great reflection upon the intelligence and patriotism of Senators who voted against those amendments to accept any different construction.

Mr. TOWNSEND. Mr. President—

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Michigan?

Mr. JONES. Certainly.

Mr. TOWNSEND. Another thought has occurred to me, Mr. President, in reference to that proposition. If the amendment offered by the Senator from Texas at that time had prevailed it would certainly have excluded the other proposition, namely, the right of the Government to admit its own vessels engaged in the foreign trade through the canal without toll. It would then, in that case, be recognized as having limited the power of the United States simply to vessels engaged in its coastwise traffic and have excluded those engaged in the foreign trade.

Mr. JONES. But why multiply words? The treaty is plain. Its purpose is clear. There is no ambiguity about it. The canal is to be built under "the auspices" of the United States. It is to assume all the obligations in connection with the canal—to pay the money, to bear the cost, to protect it, to insure its neutrality—and the nations of the world, who have been to no expense and who are under no obligations with reference to the canal, will be treated impartially and without discrimination if they observe the rules prescribed for them by the United States. That is all there is to it. That is our agreement.

If this canal had been constructed under the "auspices" of the United States, as contemplated when this treaty was entered into, it is clear to me that it would be at perfect liberty to give a preference to its own vessels and citizens using the canal, and we might well stop here upon this proposition. There is another phase of it, however, which appeals to me.

When this treaty was entered into there was no thought upon the part of anybody that the United States would acquire the title to and sovereignty over lands on the Isthmus through which the canal could be built. This treaty was made on the basis that the United States would secure concessions of some kind through the territory of the Central American States in accordance with which it would put in the canal or see that it was constructed. Negotiations had been had from time to time with Nicaragua, and negotiations were even pending with Colombia at the time the treaty was made for such concessions, and, under date of January 23, 1903, President Roosevelt transmitted to the Senate a treaty made with the Republic of Colombia under which the United States was given "the exclusive right for a term of 100 years, renewable at the sole and absolute option of the United States for periods of similar duration, so long as the United States may desire, to excavate, construct, maintain, operate, control, and protect the maritime canal, with or without locks, from the Atlantic to the Pacific Ocean to and across the territory of Colombia," and for this purpose the Republic of Colombia granted to the United States for the term of 100 years, renewable as above provided, the use and control of the territory along the route of the canal 5 kilometers in width on either side of the same. This grant, however, amounted to nothing more than a perpetual lease, and was granted upon the conditions set out in the treaty. The United States bound itself to pay Colombia \$10,000,000 on ratification of the treaty and an annual payment of \$250,000 during the life of the treaty, beginning nine years after its date.

It was expressly provided in article 4:

The rights and privileges granted to the United States by the terms of this convention shall not affect the sovereignty of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised.

The United States freely acknowledges and recognizes this sovereignty and disavows any intention to impair it in any way whatever or to increase its territory at the expense of Colombia, or of any of the sister Republics in Central or South America, but, on the contrary, it desires to strengthen the power of the Republics on this continent and to promote, develop, and maintain their prosperity and independence.

When this treaty was negotiated no thought was entertained of acquiring the title and sovereignty to the lands through which the canal was to be constructed.

The canal, however, was built under conditions never contemplated by anyone at the time of the making of the Hay-Pauncefote treaty. The essential conditions underlying the treaty are entirely lacking. The canal was to have been built under concessions secured from other countries when using foreign territory. It has been built, however, through territory owned by the United States and over which the United States has full sovereignty. The canal is the actual property of the United States, built in and through the territory of the United States. We own a strip of territory across the Isthmus of Panama 10 miles

wide, acquired from the Republic of Panama by a treaty concluded November 18, 1903, ratified by the Senate, and finally proclaimed February 26, 1904.

* * * * *

The United States is, by the express terms of the grant, made the sovereign and proprietor of the land through which and in which the canal is built. These 10 miles across the Isthmus of Panama are the territory or property of the United States. As such, its control and its use is a matter of domestic concern with which and about which no foreign nation can interfere.

The Hay-Pauncefote treaty did not contemplate, and could not contemplate, this state of affairs, and even if under the terms of the treaty the United States would have been prohibited from giving a preference to its own vessels if the canal had been constructed under the conditions contemplated by the treaty it can not apply to the present situation and to its rights in its own territory.

As I have said before, it would be beyond the power of the President and the Senate by treaty to prescribe rules and regulations with reference to the use or in respect to the property or territory of the United States. That can be done only by Congress. What they could not do they will not be presumed to have attempted to do, and this, in my judgment, is a conclusive argument against the contention that under the treaty the United States is prohibited from giving a preference to its own vessels passing through the canal.

* * * * *

This treaty does not apply to the canal as constructed. If we had acquired the 10-mile strip we now own, the treaty would never have been entered into. We would have gone on and built the canal without consulting any other nation on earth. If we want to build another canal or promote its building through foreign territory this treaty would apply, but so far as the canal as now built is concerned it is just as if the treaty had never been made.

But, in any event, under the plain terms of the treaty we are not prohibited from giving a preference to our own ships, and by reason of the changed conditions not contemplated in the making of the treaty by which the canal is our own absolute property, constructed in and through our own territory, the treatment of our vessels is a purely domestic matter, with which no other nation has any concern and with which we will tolerate no interference whatever upon the part of any other government. We may quibble and split legal hairs all we please here, but the people of the country know that this canal is ours, that it passes through our territory; and they know that, being ours and passing through our territory, we can use it as we please and permit its use to our citizens upon such terms as we see fit to impose, and they will brook no interference with our rights in this respect by any nation on earth.

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Mr. President, this is the most momentous legislation of this Congress and of many years. We must assert our right to develop with our own, for our own as we deem wise and proper without interference by any foreign power. We must deny the right of the treaty-making power to surrender to any other nation the right to control the use we shall make of our own property or the treatment we shall accord to our own people. The flag which flies over the Panama Canal must mean there the same as it does in any other Territory of the Republic. No toll gatherer should stand at its portals and exact tribute from American ships and American commerce any more than at the entrance of any other Government work. This greatest of all national undertakings must be kept free from railroad control and preserved as the most efficient defender of American enterprise and American business from monopolistic exactions. Built by American capital, completed by American energy and pluck, operated and controlled by the American Republic, with justice to our own people and impartiality toward all nations, this greatest achievement of the ages will glorify us and bless all mankind.

**FROM SPEECH OF HON. FRANK E. DOREMUS, OF MICHIGAN, IN
THE HOUSE OF REPRESENTATIVES MAY 16, 1912.**

Mr. DOREMUS. Mr. Chairman, I desire at the outset to make a few general observations that will explain my attitude on the pending bill before entering upon a discussion of its merits.

The five members of the committee who signed the minority report parted company with their colleagues because of a firm conviction that to tax interstate commerce at the Panama Canal would be an unwarranted departure from a long-established policy and would deny to the American people the full and complete benefits to which an investment of \$400,000,000 clearly entitles them. [Applause.]

To my mind this is the most important and far-reaching question that has come before Congress in a generation. The naked issue that confronts this House is whether the Panama Canal is to be run in the interest of the taxpayers and consumers of the United States or in the interest of the transcontinental railroads that have always opposed the canal and would now destroy its beneficial use to the American people. [Applause.]

In my judgment, Mr. Chairman, it would mean political suicide for any party or any individual who votes to make this great canal, built at such tremendous expense, less than a free and unfettered competitor of railroad transportation. [Applause.]

If we could have a referendum on this question of a free waterway to interstate commerce, absolutely divorced from railroad influences, nine-tenths of the American people would vote "Yes" and the railroads would vote "No."

The canal should not only be a free waterway for our domestic commerce, but no railroad-owned or railroad-controlled boat engaged in interstate commerce should be permitted to poke its nose into the locks. [Applause.]

I repudiate the specious plea that this great question should await a future solution. The time to play fair with the American people is now. Let us not do the wrong thing to-day and trust to a future Congress to right the wrong. [Applause.]

It is said that by the Hay-Pauncefote treaty we have bartered away to a foreign government our constitutional power over interstate commerce through the canal. On that proposition I refuse to run up the white flag of surrender. I deny that the control of our domestic affairs has been transferred from Washington to the Court of St. James. [Applause.]

If we are going to allow the English press to construe the Hay-Pauncefote treaty for us and permit the railroads to dominate the canal, we might better have sunk our four hundred millions of dollars in the bottom of the sea.

* * * * *

I hope this House will meet the issue squarely and serve notice upon the railroads and their Wall Street allies that they must keep their hands off the Panama Canal. [Applause.]

For the first time in American history it is proposed to erect a tollgate in the path of interstate trade. I believe that if this House does its duty it will apply the torch to section 5 of this bill and burn it up. Let the conflagration be so complete that a like proposal will never find its way to the floor of this House. [Applause.]

The reasons which actuated the majority of the Committee on Interstate and Foreign Commerce to recommend tolls upon our coastwise trade at the Panama Canal are found in the report that accompanied this bill. Therein we are informed that free tolls to our domestic merchant marine would be a "subsidy" to the shipowner, because it would take money from the American people and give it to a small special interest. This would be a strange doctrine, Mr. Chairman, to be embraced by this House, a majority of whose Members profess the faith of their Democratic fathers and proclaim their unflinching devotion to our ancient institutions.

I hold in my hand a volume containing the laws enacted at the first session of the First Congress under the Constitution. This volume is gray and musty with age, but within its ancient covers are reflected, in my opinion, more wisdom on the subject of our merchant marine and the development of American commerce than is contained in all the propositions that have been advanced in Congress during the intervening years. The first act found in this volume is an act to regulate the time and manner of administering certain oaths—an unimportant measure. The second act, introduced by James Madison, approved July 4, 1789, is an act for levying duties on goods, wares, and merchandise imported into the United States.

This act aimed to raise revenue for the support of the Government, protect our infant industries, and encourage the upbuilding of our merchant marine. This latter purpose was accomplished by providing for a discount of 10 per cent of the tariff duties upon imports into this country in ships built and owned by

American citizens. Not satisfied with this, Congress provided in the same act for special discrimination in favor of American vessels in the trade of the Far East. It provided that if tea was imported in American ships direct from India and China, it paid a duty of 6 cents a pound for Bohea, 10 cents for Souchong, 20 cents for Hyson, and 12 cents for all other green varieties. If, however, tea was imported in a foreign ship, it paid a duty of 15 cents for Bohea, 21 cents for Souchong, 45 cents for Hyson, and 27 cents for other varieties. The effect of this discrimination in favor of our own shipping will be understood when it is stated that on a cargo of 100,000 pounds of assorted teas an American ship sailing from China or India would pay duties of \$10,980, while a foreign ship would pay \$27,800 for a like cargo.

The effect of this law upon American shipping was instantaneous. The report of the American Institute of the city of New York stated in 1828 that "so complete has been this security that your committee believes that there has not been a single pound of tea imported since the passage of the law in question which has not been imported in an American bottom." (Marvin's American Merchant Marine, p. 41):

Between 1789 and 1828 Congress passed numerous laws intended to protect and encourage American shipbuilding. Under these wise and salutary measures our merchant marine grew rapidly. On December 31, 1789, our total shipping registered for the foreign trade was only 123,893 tons. It had increased to 346,254 tons in 1790 and to 576,735 tons in 1796.

I have carefully examined the debates in Congress that preceded the passage of the act of 1789, and have found no intimation or suggestion that a reduction of 10 per cent in duties on goods carried in American vessels would take money from the pockets of the people and give it to a special interest. The Members of that Congress knew that a tax collected at the customhouse would be borne by the consumer, and that a lower duty in favor of goods carried in American ships would relieve the consumer and at the same time encourage the upbuilding of our merchant marine. Give us more "subsidies" that leave money in the pockets of the people and at the same time develop American industries.

The third act passed by the First Congress, approved July 20, 1789, was an act imposing duties on tonnage. It provided that on all ships built within the United States and belonging wholly to a citizen or citizens thereof a tonnage duty of 6 cents per ton should be levied. It provided that all ships thereafter built in the United States, belonging wholly or in part to subjects of foreign powers, should pay a duty of 30 cents per ton, and that all other ships should pay duties at the rate of 50 cents per ton. It also provided that no ship built within the United States and belonging to a citizen or citizens thereof should, while employed in our coasting trade, pay tonnage duties more than once in any year. At the present time no tonnage duties are imposed upon vessels engaged in our coastwise trade. This policy of encouraging our merchant marine culminated in 1817 in a law that prohibited foreign vessels from engaging in our coastwise trade. It was, however, the legislation of 1789 that laid the foundation of our long-continued policy of preserving our domestic trade to American vessels, and this policy, supported by our ablest statesmen in all parties, has given the United States the greatest domestic merchant marine on the globe. Under the stimulus of this early legislation the tonnage of our coastwise shipping increased from 68,607 tons in 1789 to 245,295 tons in 1800. It reached the one-million mark in 1838, and has continued its rapid growth up to the present time. In 1911 the tonnage of our coastwise trade reached the splendid volume of 6,720,313 tons.

In the Fifty-eighth Congress the Democratic minority, while opposing a direct subsidy from the Treasury to American ships, favored a return to the ancient system of discriminatory duties as best calculated to restore our merchant marine. I quote the following from the report of the minority members of the Merchant Marine Commission, presented in 1905:

A return to the discriminating duty policy appears to be generally favored, as shown by the hearings of the Merchant Marine Commission at the most important ports on the Atlantic, Pacific, and Gulf coasts, and on the Great Lakes. This was the policy of the fathers of the Republic, under which our shipping interests were so marvelously developed in our early history. Under this policy merchant ships flying the American flag were seen in every important port of the civilized world, and, under its fostering care, our ships carried more than three-fourths of our exports and imports. (Rept. 4136, pt. 2, 58th Cong., 3d sess.)

This was the voice of Democracy, speaking through its chosen Representatives, in the Fifty-eighth Congress. What will be its position now, when, for
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the first time in American history, it is proposed to hold up at a tollgate an American vessel engaged in interstate trade and exact from it the same tribute we demand from a foreign vessel flying a foreign flag?

My Republican friends, how are you going to vote on this proposition? This is not a partisan question. Two Republicans and three Democrats signed the minority report, advocating no tolls on American ships engaged in interstate commerce. Are you gentlemen, who in the past have advocated direct subsidies from the Treasury in order to encourage our merchant marine, going to vote against this preference to American shipping? I sincerely hope not.

* * * * *

I desire now to discuss the claim that the Hay-Pauncefote treaty prevents the United States from favoring American vessels engaged in interstate commerce. The preamble of the Hay-Pauncefote treaty recites that it is—

desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the convention of the 19th of April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in article 8 of that convention.

For a proper understanding of what was meant by the words "general principle" of neutralization mentioned in the preamble of the treaty, it will be necessary to refer briefly to the Clayton-Bulwer treaty and the circumstances that surrounded its ratification. The discovery of gold in California emphasized the desirability of constructing a transisthmian canal to connect the Atlantic and Pacific Oceans. The route most generally considered at that time was via San Juan River and Lake Nicaragua. In 1849 a treaty was entered into by the United States and Nicaragua whereby the Government of the latter conceded to an American company the right to build a canal from San Juan, on the Caribbean Sea, through the San Juan River and Lake Nicaragua to the Pacific. Two obstacles, however, stood in the way of this company's successful prosecution of the undertaking. One was the British pretensions in Nicaragua, and particularly to the so-called Mosquito coast, over which Great Britain claimed to exercise a protectorate, and the other was the lack of the necessary capital in this country.

It would serve no useful purpose to dwell upon the claims and counterclaims with reference to British pretensions in Nicaragua, Costa Rica, and the Mosquito Coast. It will suffice to say that they were deemed by this Government of such importance that in 1849 Mr. Clayton, Secretary of State, entered into negotiations with the British Government that resulted in the ratification of the Clayton-Bulwer treaty in 1850. By this treaty the two Governments engaged to cooperate in guaranteeing the neutrality of a ship canal, to be open to the world and common to all nations. This convention contemplated that the canal should be built by a private corporation, and declared that neither the Governments of Great Britain nor the United States would ever obtain or maintain any exclusive control over the canal; that neither would erect or maintain any fortifications commanding the same or occupy, fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, and the Mosquito Coast, or any part of Central America. By this treaty the two Governments assumed a joint protectorate over the canal and the private corporation which, it was expected, would undertake the work. By article 7 of the Clayton-Bulwer treaty they determined that they would give their support and encouragement to such persons or company as might first offer to commence the canal with the necessary capital and the consent of the local authorities. This undoubtedly had reference to the American company which had already obtained its concession from the Government of Nicaragua. At this time, however, two other routes had been suggested—one through the Mexican Province of Tehuantepec and the other through the Isthmus of Panama. For this reason alone another article was added to the treaty. This was article 8, the "general principle" of which, under the Hay-Pauncefote treaty, it is our duty not to impair. * * *

For the purpose of this controversy it would avail nothing to follow this celebrated treaty on its troublous journey from 1850 to 1902, when it was abrogated and superseded by the Hay-Pauncefote treaty. To-day not a vestige of the conditions that surrounded the making of the Clayton-Bulwer treaty remains. All hope of constructing the canal by private individuals or corporations was long ago abandoned. Great Britain claims no protectorate, sovereignty, or dominion

subsidy or otherwise their own vessels using the Suez Canal. According to the report of the Commissioner of Navigation for 1911, the Russian Government in 1908 appropriated the sum of \$334,750 for the purpose of repaying the tolls exacted of Russian vessels passing through the canal to and from Russian ports. The right of Russia to do this under the treaty of Constantinople has passed unquestioned, yet we are confronted at the threshold of this controversy with the strange proposition that the United States, having adopted the rules of the convention of Constantinople, are prevented from doing the same thing that other nations under that convention have done. The construction that the powers signatory to the treaty of Constantinople have given that instrument clearly supports our right under the Hay-Pauncefote treaty to favor our own shipping; and if we have the right to collect the tolls at the canal and repay them, we certainly have the right to remit them in the first instance. As stated in the minority report:

It is unnecessary to resort to a device or subterfuge in order to do indirectly what we have a right to do directly.

* * * * *

The bill now under consideration expressly reserves the right of the United States to pass its own ships of war through the canal without the payment of tolls, notwithstanding the fact that the treaty provides—

the canal shall be free and open to vessels of commerce and of war of all nations observing these rules on terms of entire equality.

The minority of your committee confess their inability to see the consistency of the position assumed by the majority of the committee that free tolls to our ships of commerce would violate the treaty, but that free tolls to our ships of war would not violate the treaty. In attempting to justify the right of the United States to exempt our war vessels from the payment of tolls, while denying our right to exempt our vessels of commerce, the majority of the committee take refuge behind article 2 of the treaty which gives the Government of the United States—

all the rights incident to such construction as well as the exclusive right of providing for the regulation and management of the canal.

Let us examine this for a moment. The full text of article 2 reads as follows:

It is agreed that the canal may be constructed under the auspices of the Government of the United States either directly at its own cost or by gift or loan of money to individuals or corporations, or through subscriptions to or purchase of stocks or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all the rights incident to such construction as well as the exclusive right of providing for the regulation and management of the canal.

It will be observed that, subject to the provisions of the present treaty, this Government has the exclusive right of providing for the regulation and management of the canal; and one of the provisions of the present treaty is that the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality. If this language is to be so construed as to prevent us from preferring our ships of commerce, it must also apply with equal force to our ships of war. In other words, under any fair construction of the treaty we can not exclude from its provisions vessels of war and include vessels of commerce. Either we have the power to exempt both from the payment of tolls or the power to exempt neither.

* * * * *

There is an inherent distinction in nature and purpose between a treaty of commerce and navigation and the Hay-Pauncefote treaty. Treaties of the first-mentioned type are made for the purpose of securing reciprocal liberty of commerce and navigation between the contracting parties. The Hay-Pauncefote treaty was entered into for the purpose of facilitating the construction of a ship canal connecting the two oceans. Our treaties of commerce and navigation are reciprocal in character. The Hay-Pauncefote treaty, to all intents and purposes, is largely unilateral. In other words, we get nothing from other countries in return for opening up this great canal to the commerce of the world. The only condition we exact is that all nations, their citizens and subjects, shall observe the rules which we have adopted as the basis for the neutralization of the canal. By our treaties of commerce and navigation we obtain the right to enter the ports, places, and rivers of foreign countries and in return grant their citizens

and subjects the same privilege in our own ports, places, and rivers. Our present agreement with Canada, regarding the use of the Soo and Welland Canals, is a reciprocal agreement. By it we permit the free use of the Soo Canal by Canadian vessels and receive our quid pro quo in the free use of the Welland Canal by American vessels. In every treaty of commerce and navigation in which we reserve the coastwise trade from its operation the reservation is merely declaratory of the law of 1817, excluding foreign vessels from that trade.

Our treaty of commerce and navigation with Great Britain contains no reservation of our coastwise trade for the reason that it was entered into before the navigation act of 1817 was passed. In that treaty it was provided that—

no higher or other duties or charges shall be imposed in any ports of the United States on British vessels than those payable in the same ports by vessels of the United States.

The Supreme Court of the United States in the case of *Olsen v. Smith* (195 U. S., 332) held that this treaty was not violated by either a State or Federal statute that exempted the coastwise trade of the United States from the payment of pilotage charges on the ground that such an exemption did not operate to produce a discrimination against British vessels.

* * * * *

Mr. Chairman, we stand to-day upon the threshold of the opening of this great canal, the most stupendous enterprise of this or any other age. About to realize the dream of years, the heart of every American thrills with pride as he contemplates the successful prosecution of this great work under the American flag. In dedicating it to the perpetual use of all mankind let us preserve inviolate the great principle of free commerce between the States and thus guarantee to the American people the full and complete benefits to which they are honestly entitled. [Prolonged applause.]

**FROM SPEECH OF HON. ROBERT F. BROUSSARD, OF LOUISIANA,
IN THE HOUSE OF REPRESENTATIVES MAY 21, 1912.**

Mr. BROUSSARD. Mr. Chairman, I purpose to discuss the proposition submitted to the House by the gentleman from Michigan [Mr. DOBEMUS] without in anywise attempting to decry those gentlemen who do not agree with me upon this proposition.

* * * * *

In my opinion foreign nations have no concern whatever, so far as our coastwise navigation laws are concerned, in what enactment may be made by this Congress relating to coastwise trade, whether that trade goes through the canal or otherwise, because no foreign vessel is permitted to engage in our coastwise trade. Only American vessels are permitted to engage in that business, and I do not see how it is possible for anyone to construe the fact that we propose to permit vessels in which no foreign nation has any interest whatever, in which they never have had any interest since the enactment of the coastwise navigation laws of this country. I do not see how any of these nations can possibly be interested in any legislation which may be enacted by this or any future Congress, so long as these laws are upon the statute books.

* * *

The owner of a foreign vessel can not complain that he is being discriminated against in favor of a vessel the character of traffic from which he is already excluded by law and from which it is excluded at this time of the cutting of the canal. The fact that an American vessel doing business between ports in the different States of the Union and doing business that is purely interstate is receiving a preference can not be the basis of complaint on the part of any vessel not permitted by law to participate in such commerce.

So far as I am concerned, I am in favor of allowing every vessel flying the United States flag to go through the canal without paying any tolls at all. I stand upon that proposition.

But we who have been opposed to any tolls upon vessels doing a coastwise business have felt that the argument which has been ingeniously presented upon this floor to the effect that there is a discrimination that violates the treaty between England and this country might prevail if we extended the benefits of this exclusion—not subsidy—to American vessels engaged in the foreign trade, and that it might possibly by such argument bring us into complications

with foreign nations at the very moment of opening the canal. We have been anxious that there shall be no complication when the canal is opened, in order that we might invite the trade of the world to go through that canal, instead of having controversies through the State Department of this Government with foreign nations engaged in foreign trade going also through the canal.

Now, I can not see how anyone can claim that there is a discrimination because of the fact that that traffic from which all nations of the world are excluded is given preference over traffic in which all other nations are permitted to participate. * * *

Now, I understand from the debate that has occurred on this floor that gentlemen are arguing that we ought to impose tolls upon American vessels engaged in the coastwise trade, because we need the money. That is not borne out by the testimony before the committee. The testimony is this, that according to the estimation of Prof. Johnson, in whom everybody who knows anything about the subject has great confidence, the canal will carry, in the first year, a tonnage of over ten and one-half million tons, and of that tonnage only 1,600,000 tons will consist of coastwise traffic. The estimate of Col. Goethals is to the effect that the cost of maintaining the canal will be only \$4,000,000 a year, and that with the profits accruing to us by virtue of the fact that under this bill coaling stations, and so forth, will be operated by the Government, this cost will be reduced to \$3,500,000. It is estimated that with a toll of \$1 a ton a revenue of over \$9,000,000 would be derived with which to operate the canal. If you exclude the coastwise trade you would still have \$3,500,000, with which to pay an expenditure of \$3,500,000.

Now, where is the necessity of putting on this toll? And yet gentlemen who are opposed to the granting of free passage to American ships engaged in the coastwise traffic assert that the failure to tax coastwise traffic is a subsidy. I will tell you where the subsidy is. The subsidy is not in favor of American vessels that will pass through the canals, but the subsidy is to the railroads. [Applause.] Do not talk to me about subsidies. Why, to carry the argument to a logical conclusion of the gentlemen who claim it as a subsidy to the vessels, suppose we should put a tax of \$10 a ton on every vessel in the coastwise trade going through the canal, there would not be a ton go through, but the railroads would charge the American consumer every cent of the \$10 in the transportation of freight and in supplying the demands of those who live on the coast just as they would those living in the interior of the country. Why, gentlemen, the subsidy is for the railroads. We put in the bill a maximum of \$1.25 a ton. Everybody admits that the tax will only be a dollar in order to permit this canal to compete with the Suez Canal. Will anyone say, as the President has declared for \$1 a ton, that the 25 cents not charged is a subsidy, or will it be construed as a remission of authorized charges?

The subsidy is for the railroad. No man came before the committee asking for the imposition of a tax on the steamship companies except the men who were engaged in railroad business carrying freight from coast to coast. [Applause.] The charge of tolls is the subsidy to the railroads, and those who talk of subsidy had better look to it. The American people are wise to it, and if you look at resolutions adopted in every commercial body, not only on the coast, but in the inland cities of the country, you will find that there is no one interested in these tolls but the transcontinental railroad companies. Every dollar that you add to the tax of a ton of freight that crosses through the canal enables the railroads to add the tax onto a similar ton of freight in carrying it across the continent or in delivering it in the interior of the country.

**FROM SPEECH OF HON. GEORGE E. CHAMBERLAIN, OF OREGON,
IN THE SENATE OF THE UNITED STATES AUGUST 7, 1912.**

MR. CHAMBERLAIN. Mr. President, for one I believe that Congress should take a positive stand in the assertion of its right to prescribe rules for the use of the canal by American vessels discriminatory, it may be, but in line with the best interests of a people whose money has been expended in the acquirement of the Panama Canal Zone and in the construction of the greatest engineering work of modern times, and upon whose shoulders for all time to come must rest the burden of the maintenance and upkeep of the canal.

I maintain that this can be done without doing violence to any provision of any treaty that has been made or that now exists between Great Britain and

the United States. * * * Where others have failed the United States has succeeded, but in the negotiations which preceded the work of construction the United States, through its diplomatists and Congress, came near to abandoning the Monroe doctrine, a doctrine proclaimed almost a century ago to protect the American continent from the intrigues and interferences of foreign powers.

While I do not propose to trace the events which preceded the execution of the Clayton-Bulwer treaty, I call attention to the fact that all the correspondence and negotiations between the two Governments on the subject lead inevitably to the conclusion that its principal purpose was to bring about the construction of a particular interoceanic canal on foreign soil "between the Atlantic and Pacific Oceans by the way of the River San Juan de Nicaragua and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean."

Mr. President, in proof of this I call the attention of the Senate to the preamble of the Clayton-Bulwer treaty. It recites in terms that the purpose of the convention was the construction of a canal across Nicaragua along a definite line and through a particular river and lakes. There is not a single reference in that convention anywhere, not a line, not a syllable, not a word from which anybody can draw a conclusion that the signatory powers had in mind any place except the construction of that particular canal in that particular place, and in every section of the treaty it refers to that canal only; that is, a canal crossing Nicaragua through specified rivers and lakes.

All who have looked into this subject at all know that the reasons which brought Great Britain into the negotiation for the treaty was the fact that she claimed to have some rights in the San Juan River and that there was a question as to the right of the Nicaragua Government to make a treaty with the United States that should attempt to divest Great Britain of these asserted rights.

* * * * *

Mr. President, I say that the signatory powers had one particular object, and that was to construct the canal in a particular part of a foreign territory. I call the attention of Senators to this statement in article 6 of the treaty:

And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication.

The words said canal referring to the canal which is mentioned in the preamble of the convention, and that was the one across Nicaragua. Now, up to the eighth section of the treaty to which the Senator from Iowa has just called attention there is no reference to any other canal.

Section 8 provides:

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object—

And that is the object stated in section 6—

but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications.

Now, Mr. President, the particular object which the signatory powers had in view was to build a canal across Nicaragua, with a secondary purpose of maintaining the general principle of neutrality, and that was to be accomplished not by that treaty, not by any arrangement which existed between Great Britain and the United States at that time, but by subsequent treaty stipulations. So the secondary purpose of the Clayton-Bulwer treaty was the establishment or the maintaining of the general principle of neutrality as to any canal, and that was left open entirely to subsequent negotiations between the two Governments.

I take the position that there has never been a time, so far as Great Britain was concerned, when the United States could not have proceeded to the construction of a canal across the present route, and that the matter of the adoption of rules and regulations for its use was left, even under the terms of the eighth article of the Clayton-Bulwer treaty, to the voluntary treaty stipulations of the two powers subsequently to be entered into. I claim further that the Hay-Pauncefote treaty was unnecessary in so far as it was intended to supersede the Clayton-Bulwer treaty, and that its only effect has been to make acute the issues involved in the Clayton-Bulwer treaty, which had practically been terminated by repeated violations of its terms by the British Government, and latterly by a practical abandonment.

I never did know and I have never been able to understand why the United States ever deemed it necessary to enter into the Hay-Pauncefote treaty. The Clayton-Bulwer treaty having been confined to one particular territory, when the plan of construction across that territory was abandoned by the United States and another place selected it was absolutely unnecessary for this Government to have entered into any treaty negotiations with Great Britain as to the construction of a canal at any other point.

I would be interesting but would subserve no useful purpose in this discussion to show the constructions that have been placed upon the Clayton-Bulwer treaty both by this country and Great Britain. It is sufficient to say that at no time since its execution has the American construction, nor, I may say, common-sense construction, thereof been observed by the British Government, for although the parties to it jointly agreed not to exercise dominion over or fortify or colonize Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, Great Britain continued, against our protest, to exercise dominion over Belize, or British Honduras, which exceeds in area the States of Massachusetts, Rhode Island, and Connecticut; and in other respects, against the protests of this Government, a construction has been placed upon this treaty totally at variance with its terms and with the American idea. Immediately after its execution disputes arose between the two Governments in reference to the refusal of Great Britain to observe its terms, which led to prolonged diplomatic correspondence.

In this connection I quote from a letter of Gen. Cass, Secretary of State, to Lord Napier, of date May 29, 1857:

The Clayton-Bulwer treaty, concluded in the hope that it would put an end to the differences which had arisen between the United States and Great Britain concerning Central American affairs, has been rendered inoperative in some of its most essential provisions by the different constructions which had been reciprocally given to it by the parties, and little is hazarded in saying that had the interpretation since put upon the treaty by the British Government, and yet maintained, been anticipated it would not have been negotiated under the instructions of any Executive of the United States nor ratified by the branch of the Government intrusted with the power of ratification.

A protracted discussion, in which the subject was exhausted, failed to reconcile the conflicting views of the parties; and as a last resort a negotiation was opened for the purpose of forming a supplementary treaty which should remove, if practicable, the difficulties in the way of their mutual good understanding and leave unnecessary any further discussion of the controverted provisions of the Clayton-Bulwer treaty. It was to effect this object that the Government of the United States agreed to open the negotiations which terminated in the treaty of October 17, 1856, and though the provisions of that instrument, even with the amendments proposed by the Senate, were not wholly objectionable either to that body or to the President, still, so important did they consider a satisfactory arrangement of this complicated subject that they yielded their objections and sanctioned by their act of ratification the convention as amended. It was then transmitted to London for the consideration of Her Britannic Majesty's Government, and, having failed to meet its approbation, has been returned unratified. The parties are thus thrown back upon the Clayton-Bulwer treaty, with its disputed phraseology and its conflicting interpretations; and, after the lapse of seven years, not one of the objects connected with the political condition of Central America which the United States had hoped to obtain by the arrangement has been accomplished.

This letter calls attention in express terms to the fact that within seven years after the execution of the treaty Great Britain was doing just exactly what she had agreed, or at least as this Government thought she had agreed, in the Clayton-Bulwer treaty that she would not do. I have not a doubt, and I am sure that those who carried on this correspondence with the British authorities had no doubt, that it was the understanding of the United States that Great Britain, under the terms of the Clayton-Bulwer treaty, would abandon her claims to every portion of Central America occupied by her at the time of the execution of the treaty.

As late as December 8, 1857, while these controversies were still waging, President Buchanan sent to Congress a message calling attention to the fact, in which he says:

Since the origin of the Government we have been employed in negotiating treaties with that power and afterwards in discussing their true intent and meaning.

I may say, parenthetically, that we are still engaged in that work.

In this respect the convention of April 19, 1850, commonly called the Clayton and Bulwer treaty, has been the most unfortunate of all, because the two Governments place directly opposite and contradictory constructions upon its first and most important article. Whilst in the United States we believed that this treaty would place both powers upon an exact equality by the stipulation that neither will ever "occupy or fortify or colonize or assume or exercise any dominion" over any part of Central America, it is contended by the British Government that the true construction of this language has left them in the rightful possession of all that portion of Central America which was in their occupancy at the date of the treaty.

In other words, Great Britain had not abandoned a foot of her territory or released a single claim that she had been asserting.

In fact, that the treaty is a virtual recognition on the part of the United States of the right of Great Britain, either as owner or protector, to the whole extensive coast of Central America, sweeping round from the Rio Hondo to the port and harbor of San Juan de Nicaragua, together with the adjacent Bay Islands, except the comparatively small portion of this between the Saratoon and Cape Honduras. According to their construction—

That is, the British construction—

the treaty does no more than simply prohibit them from extending their possessions in Central America beyond the present limits. It is not too much to assert that if in the United States the treaty had been considered susceptible of such a construction it never would have been negotiated under the authority of the President, nor would it have received the approbation of the Senate. The universal conviction in the United States was that when our Government consented to violate its traditional and time-honored policy and to stipulate with a foreign Government never to occupy or acquire territory in the Central American portion of our continent the consideration for this sacrifice was that Great Britain should, in this respect at least, be placed in the same position with ourselves.

Mr. Buchanan calls attention in this message to the fact that attempts upon the part of this Government to bring about an adjustment of differences growing out of the Clayton-Bulwer treaty had proved abortive, and expressed the hope that a reasonable adjustment of the Central American questions might finally be reached between the two Governments.

On December 3, 1860, President Buchanan again sent a message to Congress, in which he advised Congress that the discordant constructions of the Clayton-Bulwer treaty, which at different periods bore a threatening aspect, had resulted in a final settlement entirely satisfactory to this Government, and this through the execution of treaties between the Republics of Honduras and Nicaragua and the British Government; but this statement was not justified by subsequent proceedings, and negotiations between the two Governments continued, and even after the execution of the Hay-Pauncefote treaty they are continuing, and the time has now arrived when this Government place a construction upon the Hay-Pauncefote treaty in line with the views that have been expressed by former Presidents and Secretaries of State, not inconsistent with the terms of the treaty but entirely consistent with American interests and with the doctrine as enunciated by President Monroe in 1823.

Coming now to the Hay-Pauncefote treaty, I insist that there is nothing in it which would prevent discriminatory tolls or free tolls to vessels engaged in the coastwise traffic.

I am not so sure but that under the terms of that treaty we not only have the power to grant discriminatory or even free tolls to our coastwise traffic, but we have the right to treat American vessels engaged in foreign commerce on a different basis from foreign vessels engaged in foreign commerce, and, although it is probably not the time to do it now, the time will come when this Government will insist on its right to grant discriminatory tolls to American vessels engaged in foreign commerce.

I venture to suggest that although it in terms supersedes the Clayton-Bulwer treaty, it by no means settles and adjusts the controversies between Great Britain and the United States which grow out of the Clayton-Bulwer treaty.

I call attention to the Hay-Pauncefote treaty for just a moment. The first draft of this treaty that came to the Senate of the United States proposed that both Great Britain and the United States were to formulate the rules that were to govern the use of the canal, practically placing a joint protectorate over the use of any canal that might be completed. I am not admitting here for a moment that we had then in view the construction of a canal over our own territory, but the construction of a canal over some other territory than our own. The purpose at first was to allow both Governments to have jurisdiction over the fixing of rules and regulations for the conduct of the canal. When it was finally agreed upon and after amendments made in the Senate this provision was changed and article 2 of the Hay-Pauncefote treaty provides:

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Now, Mr. President, what are the rights incident to construction and what are the rights as to the exclusive authority of providing for the regulation and

management of the canal? It has been stated here that article 2 is controlled by article 3. It was stated on the floor of the Senate, in answer to a question put to the Senator from Mississippi [Mr. Percy], that the United States had absolutely no rights that were not granted under the terms of the treaty to Great Britain or to any other power on the face of the earth. I certainly dissent to that view.

* * * * *

Mr. President, I insist that section 2 gives to the United States the exclusive right to provide for the regulation and management of the canal. Article 3 of the treaty is not a positive and binding obligation upon this Government; it is a directory provision only that the basis of the neutralization of the ship canal shall be substantially as embodied in the convention of Constantinople. In other words, the convention of Constantinople was to be a substantial basis for such rules as the United States might adopt for the use of the canal by other powers.

That the United States was not understood to be included within the words "all nations" at the time the treaty was ratified by the Senate, has been affirmed by the distinguished Senator from Massachusetts, and he has expressly stated in this Chamber that if he had known at the time the treaty was reported by him from the Committee on Foreign Relations of the Senate that the words "all nations" embraced the United States, he would not for a moment have assented to such construction.

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Can it be that The Hague tribunal—even if the questions involved can ever reach it—as is suggested by the Senator from Massachusetts, is a packed tribunal, where a case is already prejudiced against us, because the interests of the continental powers are adverse to the interests of the American people in this controversy? If that be true, Mr. President, then the Senate acted with great wisdom when it declined to give its consent to the British and French arbitration treaties as they came to this body, and the sooner proceedings are initiated under The Hague convention to withdraw from it the better it will be for the American people.

To include the United States in the words "all nations" would practically make us powerless to protect ourselves even against an adversary in time of war, and we would be placed in the anomalous position of putting naval armaments of other nations through the canal to destroy our coastwise cities and give to them the same facilities that we would be allowed to give to our own vessels being transferred from one coast to the other to protect those same cities against the enemy's vessels. I know that Senators have said that the condition of war is an anomalous condition and that all treaties are suspended during times of war, and yet these gentlemen are sticklers for the strictest construction of the language of that treaty. Their theory ought to go the full length, and it ought to be observed in time of war as well as any other time, because wars can not more seriously affect the interests of the country than would our interests be affected if the construction which some Senators seek to place upon this treaty is placed upon it.

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In conclusion, Mr. President, I appeal to the Senate to reject the amendments to the bill which were proposed by the Senate committee and to enact it substantially as it came from the House of Representatives. It embodies the American idea; it grants free tolls to ships engaged in coastwise traffic; it forbids the use of the canal by railroad owned or controlled ships or ships in which railroads have an interest. If any complaint is to be made against the House bill it is that it ought to go further and exempt or at least discriminate in favor of American ships engaged in foreign commerce; but that may safely be left to future legislation. The bill as it came to the Senate from the House had been carefully considered from every viewpoint, extensive hearings had been held, and the report of the committee, with the views of the minority as expressed in a separate report, both testified to the care and attention which was given to the measure while it was before the House committee. The people of this country will be satisfied with nothing less than a bill substantially along the lines of the bill which passed the House of Representatives.

**FROM SPEECH OF HON. JOSHUA W. ALEXANDER, OF MISSOURI,
IN THE HOUSE OF REPRESENTATIVES MAY 17, 1912.**

Mr. ALEXANDER. Mr. Chairman, it is impossible for me in the time allotted to me to discuss this question as I would like to. I wish to discuss it from the standpoint of the American merchant marine. I will say, in passing, that I am not undertaking to reflect the views of the committee of which I have the honor to be chairman, for I do not know the views of the committee as a whole. I do know, however, that the members of the Committee on the Merchant Marine and Fisheries are all very anxious to do something to restore our American merchant marine in the foreign trade.

It is true that our coastwise merchant marine is greater than that of any other nation, and if we include our coastwise merchant marine we have a larger merchant marine than any other nation save Great Britain; but it is a source of humiliation to American citizens that more than 90 per cent of our foreign trade is carried in foreign ships and has been for many years past. I will not undertake to go into the causes of the decline of our American merchant marine. They are many and have often been discussed on this floor. But with this bill pending I could not let the occasion pass without suggesting to the majority of the Committee on Interstate and Foreign Commerce that, if it may be done consistently, they should be willing and anxious to respond to this demand and concede something to our American merchant marine.

I must confess that the situation here is an anomalous one. I would think that an American citizen, a Member of this Congress, jealous of the rights of his own country and his own flag, would leave it for some other nation to contend that we may not discriminate in favor of American shipping in the matter of tolls on the Panama Canal. I can very well understand why the railroads do not want this discrimination. I can very well understand why the foreign shipping interests do not want this discrimination.

The gentleman from Minnesota [Mr. STEVENS] in his very able speech has undertaken to prove that it will be a violation of the terms of the Hay-Pauncefote treaty for us to discriminate in favor of our vessels in the coastwise trade, and to support his contention refers to the Welland Canal. Yet the two cases are not paralleled in any respect.

We have never asked Canada to let us share in her coastwise trade. Her vessels have a monopoly of that trade, as do our vessels of our coastwise trade. The trade between the United States and Canada on the Great Lakes is foreign trade. The Welland Canal connects international waterways—Lakes Erie and Ontario. The canal is built on Canadian territory and is under the control of the Dominion Government. It is true that in 1888 and again in 1891 representations were made by the United States that the stipulated equality in the use of the canal was denied in Canada. The tolls charged on grain, flour, and certain other articles passing through the Welland Canal amounted to 20 cents a ton, but for some years, by an annual order in council issued before the opening of lake navigation, a rebate of 18 cents a ton was granted on grain carried to Montreal or points east thereof.

Later, the Canadian Government, by order in council dated April 7, 1896, abolished all fees previously exacted from vessels navigating inland waters when entering or clearing above Montreal. Thus the controversy was happily ended.

Nevertheless it clearly appears that Canada never did concede that she had violated any of the treaty rights of the United States. The only way we forced her to make concessions to us was by the Congress passing the act of July 26, 1892, by which we gave Canada to understand that if she did not concede to us reciprocal treatment in the use of the Welland Canal we would deny to her the free passage of her vessels through the St. Marys Falls Canal.

Just what that controversy and its settlement has to do with our right to grant to American vessels free tolls in the use of the Panama Canal, I repeat, I am unable to understand.

It might be bad policy for us to do as contended by the gentleman from Minnesota [Mr. Stevens], but it can not be seriously contended that we violate the

United States, either directly at its own cost or by gift or loan of money to individuals or corporations, or through subscriptions or purchase of stock or shares, and that, subject to the provisions of the present—the Hay-Pauncefote, not the Clayton-Bulwer—treaty, the Government of the United States shall have all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Could language be more clear and free from ambiguity than this?

But it is said that article 3 of the treaty places it beyond peradventure of doubt that in the levying of tolls we must observe the rule of equality as between ourselves and other nations. To do so by giving that rule the interpretation contended for by the gentleman from Minnesota, we must have in mind the following considerations: First, that the canal is built on American territory, purchased at an expenditure of \$50,000,000; second, the annual payment to the Republic of Panama of \$250,000, beginning February 28, 1904; third, the expenditure of \$400,000,000 in the construction of the canal; fourth, the annual expenditure of \$40,000,000 to \$50,000,000 in the defense, maintenance, and operation of the canal. But how could other nations share the benefits of the canal with us on terms of entire equality unless they would come in and share with us this great burden? [Applause.]

And yet, without consideration and without assumption of any obligation on their part other than to observe such conditions and charges of traffic as shall be just and equitable, what do we, in article 3, concede to other nations? First, that "the canal shall be free and open to the vessels of commerce and of war of all nations on terms of entire equality," so that there shall be no discrimination against any such nation, or its citizens or subjects, in the conditions or charges of traffic, or otherwise; that such conditions and charges of traffic shall be reasonable; second, that the canal shall never be blockaded, nor shall any right of war be exercised, nor any act of hostility be committed within it. And yet these, with some minor provisions, are the rules adopted by the United States as the basis of neutralization of the Panama Canal, according to the very terms of the treaty, and referred to as substantially embodied in the convention of Constantinople, signed on the 28th day of October, 1888, for the free navigation of the Suez Canal.

If it was the intention of the framers of the treaty that vessels of the United States should pay the same tolls for use of the canal, why did not the framers of the treaty say so in unmistakable language? Why provide, referring to foreign nations, that the United States should make the conditions and charges of traffic just and equitable? To my mind the only answer is that the right of the Government to fix the tolls for its own shipping was so apparent and fully recognized that the only concession that could be reasonably insisted on was that other nations should be treated fairly and equitably in that regard.

Then, too, the British representative no doubt had in mind the interpretation given to the convention of Constantinople and the fact that the Turkish Government, whose authority was recognized in Egypt at the time the concession was made to De Lesseps to build the Suez Canal, might pass its vessels through the canal free of tolls; that the Russian Government pays the tolls for the merchant steamers of the Russian volunteer fleet; that the British Pacific & Orient Co. receives in subsidies nearly enough to pay all its canal dues; that the North German Lloyd receives an annual subsidy on its vessels using the canal of \$1,385,000; that Japan pays a subsidy of nearly equal that amount to the Nippon Yusen Kaisha for its steamers using the Suez Canal; that Austria-Hungary specifically provides by law for payment of Suez Canal tolls on Austrian steamers from Trieste to Bombay, Calcutta, and Kobe; that subsidies are paid by the French Government to its largest company using the canal amounting to about \$2,500,000 annually.

In the light of these facts it could hardly be contended that our Government may not remit all or part of the tolls of its vessels using the canal, and it is no cause for wonder that foreign nations are not demanding that our Government should charge the same tolls for American ships as for their own.

Again, it is contended by a majority of the Committee on Interstate and Foreign Commerce, led by their able chairman in his inimitable and facetious style, that if we favor our shipping in the matter of tolls for use of the Panama Canal we will be granting them subsidies; something justly obnoxious to a majority on this floor, if not to the American people. I have been as much opposed to subsidies to our merchant marine as the gentlemen who make this

claim. I believe there is a better way to rehabilitate our merchant marine, and as one of the means of doing so the committee of which I have the honor to be chairman has reported to the House a bill for free ships for the foreign trade and for free material, which I hope will be passed before this session closes.

But if the contention of the gentleman is correct the policy of the Government in reference to our great harbor and inland waterways is all wrong.

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Are we not all in favor of the freest interstate commerce, and should we make any distinction between that secured by the improvement of our inland waterways and the removal of an obstruction to waterway traffic between the Atlantic and Gulf States and those of the Pacific Ocean? And will not the Panama Canal give added value to our inland waters as carriers of our domestic and foreign commerce? To state the proposition is to give the answer. And yet, from this viewpoint, it would be quite as reasonable to charge American vessels for the use of our inland waterways and harbors as for the passage through the Panama Canal, and the failure to do so in the one instance is as much a subsidy as in the other.

Mr. Chairman, I have not discussed what tolls, if any, should be charged American vessels using the canal. Experience will best solve that question. I have undertaken to combat, and I hope successfully, the contentions of the majority of the Committee on Interstate and Foreign Commerce that we have no right to permit American vessels to use the canal at a less toll than that charged foreign shipping. I would remove instead of adding to the handicap of our merchant marine.

I would give to our merchant marine every possible benefit in the use of this canal, the world's greatest engineering triumph, to the end that some day—and I trust that day is not far distant—a generous share of our commerce in the world's trade will be carried in ships carrying the American flag. [Loud and prolonged applause.]

FROM SPEECH OF HON. WILLIAM E. HUMPHREY, OF WASHINGTON, IN THE HOUSE OF REPRESENTATIVES MAY 17, 1912.

Mr. HUMPHREY of Washington. Mr. Chairman, this question of the Panama Canal tolls, it seems to me, can be stated in a single sentence: The People *v.* The Railroads.

This is the entire case of the Panama Canal, so far as tolls are concerned. This is the case. The court is the American Congress. It is for us to decide this contest between the people and the railroads. I care not at what angle you may look upon the question. I care not in what shape the arguments may come. I care not from what apparent source springs the opposition. I care not what reasons may be given or what pretense may be advanced in favor of tolls for coastwise ships through the Panama Canal, it all comes back to this: The People *v.* The Railroads.

I have never belonged to that class of men who have denounced corporations because they were corporations; that have denounced great interests because they were great interests; that have believed that any great business was evil simply because it was large. I have never belonged to that class of men who seek every opportunity to stand upon the floor of the House and proclaim that they are the friends of the people. I have never been one of those who have condemned and denounced the railroads of this country.

I have never been one of those who have denounced those who have constructed and run our railroads. In fact, I have always believed, and believe now, that many of the men engaged in the building and construction of railroads have been great benefactors of the people; that this country owes to them a debt of gratitude. I would not to-day injure the railroads in the least degree. I believe that they should be permitted to make a legitimate profit. I believe that the prosperity of the railroads is largely the prosperity of the entire country, and that you can not injure the railroads without injuring the whole people of this Nation.

But believing all this is no reason why I should not be opposed, as I am unalterably opposed, to the railroads controlling the Panama Canal. I believe that we have constructed the Panama Canal primarily for the purpose, from a

commercial standpoint, of having competition between the railroads and the ships that shall run through the canal. Every attempt to impose tolls upon the coastwise trade is an attempt to throttle this competition and to that extent benefit the railroads.

Who has asked for tolls upon coastwise trade? The railroads. Who has appeared before the Committee on Interstate and Foreign Commerce and asked that tolls be placed upon our domestic trade? No one. What business interests have appeared before that committee opposing free tolls? No one.

Canal tolls is an effort to take from the American people the benefit of the many millions that we have spent in the construction of the canal and transfer this benefit to the great transcontinental railroads. The railroads of this country did everything within their power to prevent the construction of the canal, and now, by the assistance of the majority of the Interstate and Foreign Commerce Committee, it is proposed to turn over to them the benefits of this canal after it has been constructed.

The American people had hoped, and they had a right to hope, that the completion of the Panama Canal would mean the end of this complete monopoly of transportation, both on land and sea, by the railroads. People of this country hoped that, at least between the two coasts, we would have competition, and that at last we would have an opportunity by actual trial to see what would be the result of competition between rail and ship. Such competition will do more than all courts and commissions to regulate traffic and to produce a fair and reasonable rate for shipper and consumer. But now it is proposed, at the request of the railroads, and of the railroads alone, so far as the records show and so far as the hearings show, to forget the interests of the American people and, in violation of every principle heretofore followed by our Nation, to protect the railroads of the country by imposing a tax upon domestic traffic, which in the last analysis is the American public.

All through the hearings upon page after page is found this line of argument in the form of questions submitted by those who favor the bill as reported: "Will not ships, if permitted to go through the canal free, be able to carry freight so low that the railroads can not compete with them?" The solicitude of the majority of the committee as shown by these hearings for the railroads was truly and touchingly pathetic. No one, so far as I know, has attempted to show that such competition would seriously injure the railroads. While Mr. James J. Hill, if he is correctly reported, has said, in his opinion, that such competition would not injure the railroads or seriously interfere with their business, it is my understanding that experts before the committee testified that not more than 10 per cent of the traffic carried by the railroads would be directly affected by vessels running through the canal. It can not greatly injure the railroads if we are to believe the only evidence we have upon the subject, and if we are to exercise common and ordinary judgment, but it might reduce their earnings.

This is the foundation of the objection to free tolls, if we have a free canal for coastwise trade it will take away from the railroads just that much of their power to arbitrarily fix freight rates. It will tend to destroy their absolute monopoly. It will give us an opportunity for the first time in the history of this Nation to know what is the result of real competition between freight carried by land and water.

But, suppose, for the sake of the argument, that free tolls would bring a ruinous competition. Suppose that a large portion of the traffic could be carried so much more cheaply by ships than the railroads that the railroads could not compete. Would that be a public evil? Is not the public entitled to the cheapest rate obtainable? What are we building the canal for, to reduce rates as much as possible or simply to reduce them to a point where the railroads can profitably compete? When before in the history of this Nation has it been proposed to ask the assistance of Congress by way of law to protect one domestic industry from the competition of another domestic industry?

Many enlightened people of this Nation protest to-day, and always have protested, against protecting by law an American industry even against the competition of a foreign industry. The most radical protectionist has never gone so far as is now proposed by this majority report—to exercise the power of the Government to protect one American industry from another American industry.

As I have said before, I have never been one of those who have denounced what is called the "interests," but in the 10 years that I have been a Member of Congress the proposition that comes from the committee to impose tolls upon domestic traffic passing through the Panama Canal is the most indefensible and the most shameless attempt that has ever been made to turn over at the expense of the people a great public work for the benefit of the private interests.

Benefit of Tolls.

Who will be benefited by free tolls and who will be injured? Who has appeared before the committee and pointed out, or attempted to point out, that if free tolls are granted they will be injuriously affected? No one. It has been secretly circulated about the Halls of Congress that if free tolls are given some unusual calamity, like the San Francisco earthquake or the sinking of the *Titanic*, will befall somebody and somewhere. But who and where and why? This awful foreboding is so appalling that no one speaks of it except in whispers, and none has been so bold as to commit to print his thoughts upon the subject.

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One of the members of the committee favoring the report said in the hearing that not one-third of the population of the United States would be benefited by the construction of the canal, yet considerably more than one-half of the population live within a hundred miles of deep-water transportation. You draw a line south from Chicago to the Ohio River, thence west to the Rocky Mountains, thence north to the Canadian boundary and you will have practically all of the territory of the United States where freight rates and trade are not directly and powerfully influenced to-day by the water and rail rates between the Atlantic and the Pacific coasts by way of the Isthmus. Approximately speaking, the rates to-day from the Pacific coast to the Atlantic by way of the Isthmus, and from ports on the Atlantic as far west as Chicago, and from ports on the Gulf to the interior points and as far north as the Ohio River, are the same as direct rail rates from the Pacific to these points. In other words, it costs less to-day to send a thousand feet of lumber from Seattle to Philadelphia by way of the Isthmus and from Philadelphia back westward to Indianapolis than it does to send it directly by rail from Seattle to Indianapolis. It costs less to send a ton of canned salmon from Seattle to New Orleans by way of the Isthmus and from New Orleans northward approximately to the Ohio River than it does to send it directly from Seattle by rail to these points. It is cheaper to reach practically all points in Texas and Oklahoma by way of the Isthmus than it is directly by rail from Seattle to these points. In some instances rail and water rates meet even much farther west.

And what I say as to Seattle applies to other Pacific coast points as far south as San Francisco. Take as an illustration, the rail and water rates meet as far west as Duluth on canned salmon. On soda ash the rate from Hutchinson, Kans., to the Pacific coast is the same as the rate from New York to the Pacific coast by the Isthmus. In this case we have the water rate fixing the freight-rate miles eastward from the Pacific coast.

To explain more fully, I will refer to the map showing the rates on two of the chief commodities of the Pacific coast—fir lumber and canned salmon—that are shipped to the eastern portion of the United States. I will show the various rates to different points by all rail and by water and rail across the Isthmus of Panama to Atlantic and Gulf ports, and from these ports to various points in the interior. The figures marked "R" is the direct mail rate from the Pacific coast to points mentioned. The figures marked "W & R" is the rate by water and rail, by way of the Isthmus. The figures marked "R, W & L" is the rate by way of the Isthmus, then by rail to the Great Lakes, and by the Great Lakes to the point mentioned.

Now, to explain more fully what I mean, I will illustrate here on the map, because I have heard a great deal of argument to the effect that only the portion of the country along the coasts will be benefited. I am quoting from the actual statements made from the tariff rates on fir lumber and on canned salmon, the most recent I could get, which were of December of last year. You take lumber to-day from Seattle, and it will come down here to the Isthmus of Panama, be transferred on the cars, and carried 103 miles by rail across the Isthmus, come up here to Philadelphia by another boat, and be carried back west to

Pittsburgh by the railroads for 49 cents a hundred, while the direct rail rate from Seattle to Pittsburgh is 68 cents a hundred.

Now, take another illustration. You take Concord, and you will find that the all-rail rate is 75 cents.

The water rate is 55 cents. Take it as far west as Cincinnati, the all-rail rate is 64 cents. The water rate is 60 cents.

Now, you take canned salmon, which is one of the big industries of the Pacific coast, amounting to \$30,000,000 last year, and you can send that product to New Orleans and up the Mississippi to St. Louis cheaper than you can ship it direct by rail. A short time ago a cargo of barley was sent from the Pacific coast across the Isthmus and up to New Orleans and up to St. Louis for considerably less than the direct rail rate.

Now, as an extreme illustration of cases where you use water again, you take the canned salmon. It comes to New York by the water route and goes up to Buffalo, and there is again placed on a vessel and goes out to Duluth, and there practically meets the direct railroad rate from Seattle at that point.

Now, what becomes of your argument that only the people along the Pacific coast and the Atlantic coast and Gulf coast are benefited by the canal rates if you can to-day bring lumber and many other products down to the Isthmus and there transship them and carry them 103 miles by rail and place them again in ships and bring them to Atlantic and Gulf ports and then take them back west a thousand miles and up north a thousand miles from these ports as cheaply as you can send them direct? What becomes of the argument that only the two coasts of the country are going to be benefited by the Panama Canal?

I want to call the attention of the committee to this fact, that whenever you reduce these rates along the coast, interior rates must be reduced. I have heard arguments made here upon the floor of the House that if we reduce the rates to the coast the railroads will probably increase the interior rates to make up their losses; but this is the first time that I have ever heard the argument made that one competitor lowering his rates must compel the other to increase his. To show you the absurdity of that statement, suppose that we reduced the rates until the rate from New York as far east as Spokane and over into Idaho and Montana, and in all that portion of the country, is less than it is from Chicago. Chicago will either reduce her rates or New York will take that market from her. We know what Chicago will do, what she must do; she must meet the New York rate to the advantage of the buyer and seller.

Now, the argument has been made, and admitting for the sake of argument that it is true, that the east coast and the west coast will be more directly benefited by the canal, and by the remission of tolls, than will the interior, a proposition which I do not admit, except for the sake of argument. Suppose it were true. Can anyone demonstrate, for instance, that the people upon the Pacific coast are as directly benefited by the Soo Canal and by the improvement of the Great Lakes as the people in that portion of the country nearer the Lake ports? If you are going to adopt that argument, then why should not a special rate be placed upon shipping that goes through the Soo Canal?

Can anyone demonstrate that the many millions that we have put into the Mississippi River and its tributaries—more millions than we have put into the Panama Canal, and we are still putting in other millions—can anyone demonstrate that those millions directly benefit the Pacific coast and the Atlantic coast as much as they do the Mississippi Valley? Yet the Atlantic and the Pacific coasts help to pay for those improvements. If you are going upon that theory, why do you not place a charge upon the vessels that run up and down the Mississippi River? I exclude the Missouri, because, in spite of all the millions we have spent on it, there are no vessels upon it.

Now, I want to answer about the interior not being benefited by the reduction of rates; we know that water and rail rates by the Isthmus are made now as far west as Indianapolis and as far north as St. Louis in competition with the railroads. If you lower the water rate when you go through the Panama Canal, as must be the case, then you open up this territory in the Middle West to a market they have never had before. The products from the Pacific coast will then go up into this portion of the country, into places where they have never been before; and on the other hand you take the people who manufacture in Pittsburgh and Cleveland and all that great manufacturing country, they can get their product out to the Pacific coast for less than they ever did before.

Free tolls means free competition. It means free commerce. All sections of the country will be benefited by the canal, and all sections should bear the burden of its construction and maintenance.

When you say that if you reduce the freight rates on the coast of the United States that the rates in the interior will not be reduced, you might just as well say that if you reduce the level of the water along the edges of a great lake that the interior of the lake will not be reduced. One is to dispute the law of gravitation; the other is to dispute the law of trade. So that while trade will continue between the coasts the people in the Middle West will get lower rates and new markets.

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Many times in this report in sophomorical language the majority cries out that to give free tolls would be an unjust discrimination and a great injustice to 90 per cent of our coastwise vessels that now run up and down our coasts but will not use the canal. Listen how anxious and solicitous they are about the railroad-owned ships in the coastwise trade:

Ninety per cent of the coastwise ships, busy all the time in interstate business, will never approach the canal at all. Less than 10 per cent of all these coastwise ships will use the canal, making long journeys, charging correspondingly more freight and passenger rates, and making infinitely more money, yet it is selfishly demanded that those few ships—for only a few will be needed—shall be given their tolls in the interests of interstate trade, while the 90 per cent rendering service just as valuable in interstate commerce would not participate in the contribution.

If the argument of the majority be true, all the coastwise vessels are now participating in a subsidy. Every coastwise vessel receives a subsidy when it runs into one of our subsidized harbors. Why should not a coastwise ship stop and pay tolls to reimburse the Government for improving the harbors it uses? If remission of tolls is a subsidy, then every vessel that goes through the Soo Canal receives a subsidy. Why should these vessels not stop and remit to the Government the money it has expended to construct this canal? Why should this canal be free and the Panama Canal charge tolls? We have subsidized the Mississippi River and its tributaries in a greater amount than we will expend for the construction of the Panama Canal. And all these many millions have been expended for politics more than for the benefit of navigation.

If remission of tolls is a subsidy, then every vessel running on our interior rivers is receiving a subsidy. Why does not some subsidy hater, some railroad despoiler, some special-privilege denouncer, some self-proclaimed protector of the people rise and exercise his privileges and his vocabulary in demanding that the Government be repaid this vast subsidy that is given to the 90 per cent of the American vessels now running in our coastwise trade and upon our lakes and rivers?

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Every charge that is made on an American vessel in the coastwise trade passing through the canal, whether that charge be great or small, will eventually show itself in the freight rate and will eventually be paid by the American people. The amount of the charge will make no difference in the certainty and the sureness of the result. With a mind that deceives itself with the delusion that a tax, however small, is not a burden upon commerce and eventually borne by the people it is useless to argue. It is worse than a waste of words to attempt to convince anyone who holds such views, for such mind is beyond improvement and has absorbed more than earthly wisdom.

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I close this argument as I began. This is the case of the People *v.* The Railroads. Never since I have been a Member of Congress has there been such a transparent and indefensible attempt to legislate in behalf of any great private interest, without regard to the public welfare, as has been displayed in the bill that has been reported to the House proposing that in the use of the Panama Canal ships flying the American flag shall be taxed the same as those flying a foreign flag. Shall we have competition between the steamship lines running between the two coasts and the transcontinental railroads? Shall our commerce be increased and our freight rates lowered? Shall we have dug the canal for the benefit of the American people who have paid for it and own it and must protect it, or shall we have expended all these millions for the benefit of other nations and for the benefit of the railroads? This is the question that we must answer to the American people by our votes upon this bill. [Applause.]

**FROM SPEECH OF HON. WILLIAM O. BRADLEY, OF KENTUCKY, IN
THE SENATE OF THE UNITED STATES JULY 29, 1912.**

Mr. BRADLEY. Mr. President, I deny that the people of the United States have known all the time or know now that our Government has no right to extend any privileges to our commerce which goes through this canal. Had the people of the United States thought that such would be the result, the canal would never have been constructed. They never would have been willing to expend \$400,000,000 to build a canal for the joint use of all the nations of the earth in which they had no superior right.

I affirm as the first proposition that under the treaty now in force the Government of the United States has the right to give preference to its own commerce as well as its battleships.

In the second place, I affirm that if this be not true and if the treaty is to be given the strict construction contended for by those who oppose us, that the treaty is an absolute nullity, because by its terms we have endangered the very life of our own country.

In the third place, I affirm that the United States having become the owner of this territory, having become the sovereign therein, for which right they have paid, the United States having bought all the rights and property of the New Panama Canal Co., for which it has paid, not only the canal but the land which adjoins it is the absolute property of the United States, as much so as is Alaska, as much so as is the District of Columbia; and that any question which may arise in regard to these matters is not subject to arbitration, because it is a domestic question, and the United States never has submitted and never will submit the decision of a domestic question to any court of this earth.

In the fourth place, our only duty as to the nations of the world—aside from our own—is to give them perfect equality in the use of the canal, to preserve strict neutrality as between them in case of war, and to charge them no more than just and equitable tolls.

In the fifth place, now that the United States has become the sovereign of the country through which the canal passes, our right to control it is purely a domestic right, and any question affecting the same is not the subject of arbitration by The Hague or any other tribunal, but must of right be settled by ourselves. That the changed conditions render the treaty voidable whatever may be its construction.

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What was the object of the new treaty? I have very serious doubt in view of the changed conditions, the United States building the canal herself with her own money, whether she did not have a right to do so whether the Clayton-Bulwer treaty was abrogated or not, because under that treaty England as an independent nation had no right, in view of the Monroe doctrine, to construct the canal. She never had that right, and she has no such right to-day. Therefore she conceded nothing in agreeing to the new treaty. Under that treaty Great Britain expends nothing and incurs no responsibility. What is the responsibility of Great Britain under the present treaty? She does not even agree to stand by the United States, as she agreed to do under the Clayton-Bulwer treaty, as to the persons or company which should construct the canal. Her responsibility under the treaty of 1850 was to guarantee protection to the persons or company building the canal. This she does not undertake under the new treaty. Why? Because the United States did not ask her to do so, and did not desire her to do so. The United States felt that she was able to attend to her own business, take charge of her own property, and while constructing the canal to protect herself without assistance.

Mr. CUMMINS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Kentucky yield to the Senator from Iowa?

Mr. BRADLEY. With pleasure.

Mr. CUMMINS. Let me suggest at this point—I know the Senator from Kentucky will emphasize it during the course of his remarks—that the only agreement or obligation entered into by Great Britain in the Hay-Pauncefote treaty was the agreement that the Clayton-Bulwer treaty might be abrogated and the new treaty should supersede it. That is the only promise or obligation contained in the Hay-Pauncefote treaty so far as Great Britain is concerned.

Mr. BRADLEY. I thank the Senator for his suggestion, and quite agree with him in what he has said.

As I have said, Great Britain has not furnished a dollar to build the Panama Canal. It is a matter entirely in the hands of the United States; but, now when the canal has been about completed, we are told that Great Britain objects to the United States managing her own canal, which she has built and paid for with her own money, and objects to us giving our vessels any preference. Great Britain desires to be put on the ground floor with us. She desires to get the benefits of the canal without paying for them. She is like an old man of whom I once heard. He imagined that he was a philanthropist, and he provided in his will that upon his death his herd of cattle should be slaughtered and the product sold to the highest bidder, but, considering his wonderful sympathy for the poor, he provided that the horns, hoofs, and tails should be divided equally among the poor. [Laughter.] That is a fair illustration of the liberality of Great Britain, which comes here after we have built the canal and asks us now to allow that country every privilege which we have ourselves.

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In the present treaty Great Britain does not participate in the adoption of the rules for the administration of the canal; but the United States alone adopts the rules, showing that it was clearly considered between the two countries that the United States, being the builder of the canal, was conceded the right to prescribe the rules, and that Great Britain had nothing to do with the matter. As to the enforcement of the rules, Great Britain is not to-day bound under any of the terms of the treaty. In the last instance the concession to Great Britain allowing her participation was merely a matter of gratuity on the part of the United States in carrying out the original intention that the canal should be neutral.

What is meant by neutrality except that the canal shall be neutral territory as to all nations of the earth except the United States? If Great Britain and Japan should go to war, then the United States could prohibit either of them taking advantage of the canal in any way. She could prohibit any nation on earth from doing so as against a belligerent; but at the same time she does not estop herself from the right of self-protection. By failing to insist on a provision allowing her participation in the making of rules for the canal Great Britain conceded that the United States alone had the right to make the rules. The United States alone having adopted the rules, it could not be considered for a moment that she included herself in the term "all other nations." It is perfectly plain that she did not include herself, and that the rules which were adopted by her for the nations at large do not apply to her, because there is nothing to indicate anything of the kind.

You will find that there is another change in the last treaty. In the first treaty there was nothing specifically binding on the United States or any other country as to tolls. Now, bearing in mind that the Government of the United States is the owner and the proprietor of the Panama Canal, and that she was to build it, a provision was inserted in the Hay-Pauncefote treaty that the United States will not collect unjust or unreasonable tolls. That was not in the first treaty, because in the first treaty it was provided that the traffic should be open and equal to the world; but now that the position of the United States is fully understood and admitted, she agrees, so far as tolls are concerned as to the commerce of other nations, they shall be just and equitable.

Mr. President, I call attention to the further fact that in the first Hay-Pauncefote treaty, while the United States was given the exclusive right of providing for the regulation and management of the canal, its control was subject to the rules then adopted by both countries. In the present treaty the United States is given exclusive right, without any agreement as to rules provided or to be promulgated by the two contracting parties, but with the sole provision that there shall be entire equality of treatment for all nations and that the charges of traffic shall be just and equitable.

I refer to these matters to show what view Great Britain and the United States took, at the time the treaty was written, of the provision as to tolls. It is a mere concession by the United States, which stands as the mistress of the situation. In view of these changes, the exception added to the first treaty was omitted and was no longer necessary, for the United States reserved the right of self-protection in case of war.

It is perfectly plain that Great Britain recognized the justice of this change. It can not be contended that her diplomats were ignorant of changed conditions. So the agreement was made that the United States was to have exclusive right

to provide for the regulation and management of the canal. Stripped of former conditions, the United States had, first, the right to direct, order, rule, and govern, because all those terms are synonymous with the term used, which is to "regulate." She had the right to direct, govern, control, order, and conduct, for each of those words is synonymous with the word "manage," and those two words "manage" and "regulate" are the words employed in the present treaty as showing the absolute right of the United States.

I must be pardoned for being a little tiresome when I call attention again, to the fact that under the rules jointly agreed to between the two countries in the first Hay-Pauncefote treaty they were to govern the canal. In every contract there must be two parties, and those two parties must agree on something. This treaty is nothing in one sense of the word but a contract—a contract between nations—and, so far as the present rules are concerned, Great Britain does not even agree that they shall be adopted, but the United States, on her own motion, adopts the rules and makes them the basis of operating the canal.

What is the expressed reason for this treaty? In the present treaty the expressed reason is that the parties are desirous of facilitating the construction of the canal without impairing the general principle of neutralization established in article 8 of the Clayton-Bulwer treaty. What is meant by "neutralization"? That the United States, having now become the controller of the situation, guarantees neutrality, so far as she is concerned, between and among all the nations of the earth, always reserving her own right of self-protection.

It has been said that honor requires that we shall accede to the views of Great Britain. No Member of the Senate holds in higher estimation the honor of his country than do I, and I will add that no Member of the Senate holds higher in estimation the protection and life of his own country than do I; but I affirm that no nation is bound, in honor or otherwise, to destroy herself by any treaty, even if the construction contended for by those who do not agree with me is correct.

The first proposition, if we are to adopt the construction contended for, is that—

The canal shall be free and open to the vessels of commerce and of war of all nations—

Including the United States—

observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

If we are bound by that, we have no right in case of war to give ourselves any advantage. But that is not the worst part of this treaty by which it is said we are bound. Let us go a little further:

The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

What does this mean? We must take it at its face value, for we are told that we are governed by this instrument as by bands of iron. What does it mean? That the canal shall never be blockaded, though it may be necessary for us to blockade it for our own self-defense. No right of war shall be exercised. We have no right to take a battleship through that canal in case of war against us in order to protect ourselves, nor have we any right to prevent a battleship from passing through the canal to attack us; nor have we any right to unload munitions of war in the Canal Zone. We can not embark or disembark troops if we should become involved in war with another nation. We can not stop a moment in the canal, except in case of an accidental hindrance of transit, and then the vessel must resume its voyage with the utmost dispatch. What else? The provisions of this article shall apply to whom? It applies to all belligerents. It applies to us as well as everybody else. No vessel shall remain within 3 marine miles of the canal longer than 24 hours. We can not allow our own battleships to remain in these waters longer than 24 hours. What else?

Vessels of war of a belligerent shall not remain in such waters longer than 24 hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within 24 hours from the departure of a vessel of war of the other belligerent.

If we were involved in war to-morrow, this canal completed, and our ships were there for the purpose of protecting us from the invasion of a foreign foe,

and some ship of such a foe should come within 3 marine miles of the canal, we would have to wait 24 hours before we could pursue it. In other words, we would be compelled to allow it to escape, although it intended to inflict or had inflicted injury on our commerce or our possessions, because we must stand still 24 hours. O Senators, Senators, what a ridiculous construction! What a comment upon our manhood and intelligence that we have given away our birthright, our freedom, and our safety for less than a mess of pottage, and that we must go hat in hand to Great Britain and on bended knee ask her to agree that we may attend to our own business under our own flag.

* * * * *

What is the condition of the Panama Canal to-day? Let me read so much of the language of the treaty with Panama as I think is necessary to this discussion.

The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned and described * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.

Now, the United States is the sovereign in Panama, having paid \$10,000,000 therefor; just as much the sovereign there as she is in the District of Columbia. Suppose a question would arise here about something that was to be done in the District of Columbia. What Senator would be bold enough to contend that we should arbitrate that matter at The Hague tribunal? What has The Hague tribunal to do with our domestic affairs? This is an affair of our own. It is a right which we possess under these treaties and under the laws of our country, and it is a right that we propose to exercise, and not to ask any nation for its consent; nor do I believe there will be any trouble growing out of our actions. England is too wise and, in my opinion, too just to raise any disturbance without the slightest reason to sustain her contention. I am satisfied that this whole controversy will be adjusted at last by a proper diplomacy and not by turning ourselves over to The Hague tribunal, to a court necessarily constituted of the certain nations of the earth, which nations have an interest directly opposed to ours, and in which we could not have the slightest hope for justice.

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We seek no trouble. Neither do we retreat from it. We only propose to protect our own territory and our own rights. This country has never failed to protect both. Our fathers did not fail and their sons will not fail. The spirit of American liberty and American manhood exists to-day as it existed in seventy-six, in 1812, and during the War with Spain. That spirit has lived through all these years, and will continue to live as long as our Government shall stand. And by that spirit, coupled with the intelligence and sense of justice of our own people, shall this and all other questions of a similar character affecting the well-being of this country be decided. The United States has never submitted and will never submit to any other nation or court of arbitration any question affecting the authority to govern itself or to control its domestic institutions.

FROM SPEECH OF HON. HORACE M. TOWNER, OF IOWA, IN THE HOUSE OF REPRESENTATIVES MAY 17, 1912.

Mr. TOWNER. Mr. Chairman, I congratulate the committee on the wisdom and far-sighted statesmanship shown in most of the provisions of the bill submitted. It is because I so greatly appreciate and admire the act as a whole that I regret that I can not assent to all its terms. I am compelled to differ from the committee as to some of the provisions of the bill, but such changes being adopted as I believe the House must after consideration deem wise, I hope the bill will pass and become a law. I am confident that if it does it will be considered as not only one of the most important measures adopted by the present Congress, but one of the great acts of constructive statesmanship of the century, worthy as a piece of statecraft to rank with the completion of the canal as a physical and engineering accomplishment, to the lasting credit and honor of American enterprise and statesmanship. [Applause.]

Now I come to article 3 of the Hay-Pauncefote treaty, which provides:

The United States adopts, as to the basis of the neutralization of such ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

I would like just here to call attention to this distinction, which seems in the minds of some gentlemen not very plain or clear. We were not only negotiating a treaty with Great Britain, but we were entering upon an obligation through her with all the other nations of the world that might come under the terms of this treaty, and any nation that desires to use this canal must come under the terms of this treaty in order to do so; and so in effect this treaty that we thus made was a treaty between the United States, building the canal, and the other nations of the world who were to use it.

Now, having stated the things that the United States might do with regard to the canal, it states the things that the United States promises to do, and how the United States will treat other nations.

The United States can not give a privilege to England that it would not grant to Germany. It can not treat the South American countries in a more favorable way than it does the European countries, although many of us would like to do so. It must treat them all upon terms of equality.

I appeal to gentlemen recognizing the situation as it was, is it not a strained construction to put upon this treaty to say that after having said the United States will build it, pay for it, put it in operation, place it upon her own purchased territory, fortify it, govern it, control it, regulate it through all the years to come, that it should have all these powers, and then, when it says with regard to the other nations of the world that they shall not be discriminated against, that they shall be treated upon terms of equality, that such language means that the United States shall not use it for her own people and her own purposes as she may choose? [Applause.]

Such conditions and charges of traffic shall be just and equitable. The United States can not demand unreasonable tolls from England or from Germany or from any other nation. The tolls that she fixes must be reasonable and they must be equitable. Under this provision what does the United States undertake to do? It must keep the canal open to all nations. It can not allow the vessels of commerce or of war of one nation to use it and refuse its use to another. It can not give special privileges to France and refuse them to Russia. It is apparent the language of the provision has reference to the manner in which we shall treat foreign nations and does not apply to our domestic concerns. It refers to ships of other nations and not to our own.

Secretary Hay, in his memorandum to the Senate following the negotiation of the treaty and contrasting its terms with those of former treaties, said:

The whole theory of the treaty is that the canal is to be an American canal. The enormous cost of constructing it is to be borne by the United States alone. When constructed it is to be exclusively the property of the United States, and to be managed, controlled, and defended by it.

We never had any such treaty as that before. The previous treaty was not such a treaty. We never entered before into an agreement by which we agreed to build the canal and pay for it, by which we agreed that we should be responsible for it, and maintain and govern and keep it free to the nations of the world forever; and therefore the restrictions of former treaties can not bind us now.

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Mr. BOWMAN. I should like to get clearly in my mind the gentleman's idea with relation to the situation regarding the canal. Is it not this: Just as a railroad might have the right when building its line to carry material in connection with the construction or might transport its own employees and officers without charging them anything, and yet be obliged to give rates which would not discriminate against anyone outside.

Mr. TOWNER. The gentleman's illustration is exceedingly happy. It would be a singular condition that would exist if the United States should persist in this attempted policy—the other nations of the world paying the tolls of their ships using the canal and the United States, which built and owns it, demanding tolls from its own vessels.

It would probably be better in form, and save any possible protest, that tolls from American vessels engaged in foreign commerce should be collected in the first instance; but these may be and should be refunded. To so refund the tolls paid would be purely a question of domestic policy and would not be in contravention of our treaty obligations.

* * * * *

President Taft has well said, "We built the canal as part of our coast line." Our laws now provide (R. S., 4220; Navigation Laws, sec. 158) that—

No vessel belonging to any citizen of the United States trading from one port within the United States shall be subject to tonnage, tax, or duty, if such vessel be licensed, registered, or enrolled.

That has been the settled policy of the country for years, and the proposition contained in this bill to reverse this policy and to charge American ships engaged in interstate trade tolls for the use of an American canal built by the American people on American soil is un-American and abhorrent. Fortunately, the question as a question of law has been settled by the Supreme Court of the United States.

In *Olsen v. Smith* (195 U. S., 332) our Supreme Court passed upon this treaty provision—

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I was somewhat amused by the ingenious argument of the gentleman from Minnesota this afternoon. He said it is true the Supreme Court in that case had decided against the treaty regulating our coastwise commerce, but did so upon the grounds that such action was only a determination of different classifications. An examination of the case will show that the question of classification had nothing to do with the pivotal point determined, which was that it was not a matter of concern to Great Britain what charges were made or conditions imposed in regard to our coastwise trade. We could do as we pleased with it, since they were prevented from entering upon it; and the decision in that case is an absolute determination by our own Supreme Court that no matter what may be the provisions of a treaty with relation to our foreign trade, it could not be applied to our coastwise and domestic trade, because the regulation of such trade could not be within the contemplation of the parties, since one of them could not under any circumstances enter it.

In that case it was accordingly held that the State law exempting coastwise vessels from pilotage charges was not in violation of the treaty. For the reason that foreign vessels can not on any terms enter our coastwise trade, the question as to tolls as to our vessels using the canal is purely a local one. The question of discrimination or inequality of treatment can not arise. The terms of a treaty can not be held to apply to a subject about which one of the parties has no interest whatever and could not be injured, whatever action is taken.

The localization of the coastwise trade and the exclusion of it from foreign influence or interest is shown in the now well-established principle of international law that if a nation opens its coastwise trade to foreign ships, such foreign ships entering into such coastwise trade will be regarded as ships belonging to the nation under whose coast trade it operates, and may be captured by the enemy of that country in time of war as if it were a hostile ship.

Summary of Legal Status.

Viewed with regard to its legal aspects, the question of our right to charge tolls may be summed up as follows:

Foreign ships engaged in foreign commerce must be treated alike; there must be no discrimination in favor of any nation. The same rule applies to foreign ships engaged in commerce between American and foreign ports. American ships engaged in foreign commerce or in commerce between American and foreign ports may be charged the same rates as foreign ships in the first instance, but the amounts thus paid may be refunded in part or in whole by the Government.

American ships engaged in our coastwise or domestic trade between American ports may be exempted in whole or in part from payment of tolls.

The whole question as to the legal objections to free tolls may be summed up in two propositions: First. The question is hardly a debatable one, since everyone admits that we may refund the tolls if we impose them. There is no serious difference between an exemption in the first instance and a collection first

and a refunding afterwards. The final result is the same. Second. If the question is debatable, we ought not to give away a right before it is claimed. We ought not to yield a principle that is not demanded. It will be time enough to yield when we are required to do so, either through diplomatic negotiations or upon the determination of an arbitral court.

Every patriotic American must rejoice that we are thus free to consider the question of tolls for American ships on its merits and as a clear question of national policy. Everyone should be glad that we are not restrained by our treaty stipulations, either technically or in spirit, to give to American shipping the favorable consideration which it deserves. Everyone should welcome the opportunity to develop our policy in harmony with our past history and take such action as must be for the best interests of the American people. [Applause.]

* * * * *

Benefits.

It is argued that it will be of no benefit either to the ships or to the people to remit the tolls.

It is contended that a toll of \$1 per net ton will not be large enough to appreciably affect the traffic. But it is shown that vessels, in order to profitably use the canal, will be of from 4,000 to 10,000 net registered tonnage. A charge of \$4,000 to \$10,000 on a single voyage is not an inconsiderable item. It is almost self-evident that to thus reduce the expense of a contemplated expedition will directly and to that extent encourage it and thus stimulate the enterprise. This will be of direct benefit both to the shipowner and to the shipper.

The observation is hardly necessary that every increased item in the cost of transportation while paid in the first instance by the shipper is added to the cost of the product and is paid eventually by the ultimate consumer. Thus the burden of the toll charged is borne by the people and not by the shipowners. It is a tax on them and not on the ships.

Experts agree that as a general proposition heavy freight can be transported by water at one-third the cost of railway carriage. If that be true, the inauguration of water as a competitor of railway transportation must necessarily bring reductions in railway transportation rates.

It is admitted by transportation experts that the establishment of water transportation will bring about a readjustment, a classification of traffic by which the heavier and cheaper commodities will go to the water carriers. For instance, lumber, a great necessity of the interior, is now transported by rail from the Columbia and Puget Sound regions to Iowa and Illinois. The principal cost to the consumer is the cost of transportation. If lumber can be shipped through the canal to New Orleans and thence barged to Iowa and Illinois points on the Mississippi, the transportation cost can be reduced more than two-thirds.

An experimental shipment of barley from San Francisco was recently made. It was carried by ship to Panama, thence by rail across the Isthmus to Colon, thence by ship to New Orleans, and thence by barge up the Mississippi to St. Louis. The cost of carriage was \$4,200 less by this method than was charged by the railways. It is manifest that if the shipment could be made without breaking bulk from San Francisco through the canal to New Orleans, and thence by barge to its destination, the transportation cost could be still further reduced.

No other example is necessary as to the effect of water competition on railway rates than the reduction of rates on the railways east of Chicago by the competition of water transportation on the Great Lakes and the Erie Canal. They have been forced down by such competition to reasonable figures.

No reduction of transcontinental rates can be made that will not be reflected by the rates to and from interior points, and the great Mississippi Valley will not only profit directly by her opportunity for river rates, connecting at New Orleans with ocean shipping, but also by the reflected reductions compelled by transcontinental competition.

Is it a Subsidy?

It is asserted over and over again that to exempt our coastwise shipping is to subsidize it. The contention that free tolls is a subsidy is strenuously urged. Indeed it may be said that the strength of the opposition to free tolls lies in

that cry. Subsidy is an unpopular word, and to label anything a subsidy is to discredit it.

But free tolls is not in any sense a subsidy. If to make free a Government improvement for the use of American citizens is a subsidy, then all public improvements are subsidies. Hundreds of millions have been spent on all kinds of public improvements all over the land. Harbors have been improved, rivers dredged and canalized, canals have been constructed—all have been made free to American citizens because paid for by their money, and yet these have not been regarded as subsidies. It is impossible to equalize the benefits of any public improvement. In the view of gentlemen here if a discrimination is shown a subsidy is established. On that line of reasoning a discrimination is made against the people of Indiana whenever a post office is built in Ohio. If that is logical, a discrimination is made against California whenever an Atlantic port is improved.

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The Soo Canal connects Lakes Superior and Huron. Through it passes an almost incredible commerce. Thirty-six million tons passed through it last year. Why not tax that commerce? That canal was built by the Government. It is maintained at large expense by the Government. But no one proposes tolls there. Is the exemption from tolls there a subsidy? And if not there, why at Panama?

But the question is not one of subsidy. To impose tolls on American ships at Panama is to tax commerce.

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American Interests.

It is particularly noticeable that in this debate all appeals to American interests are deprecated and condemned. It has been said as applicable to those who think that American interests are entitled to consideration by an American Congress that "patriotism is the last refuge of a scoundrel." It has been said that we never hear of the American flag in this House but there is some sinister motive behind it. Singular sentiments these coming from Representatives of the American people! And remarkable certainly must be conditions that would warrant condemning as demagogic all arguments for the protection and preservation of American interests!

It may be thought by some gentlemen that the only persons professing patriotism in America to-day are scoundrels, and that no expression of love for the American flag is now made unless to cover graft. But there are some of us who refuse to accept such a belief. There are some of us who even confess to a belief that there is still some patriotism in the land; that there are still to be found among our people those who love the flag and what it represents. There are some of us who believe that the day has not yet come when it is necessary to apologize for an honest endeavor to protect and preserve the interests of the American people. [Applause.]

**FROM ADDRESS OF HON. JOSEPH R. KNOWLAND, OF CALIFORNIA,
BEFORE THE LAKE MOHONK CONFERENCE ON INTERNATIONAL
ARBITRATION, LAKE MOHONK, N. Y., MAY 16, 1913.**

[Published in Congressional Record Tuesday, May 20, 1913.]

The Rights of the United States at Panama—Significance of the Objections of Great Britain to the Panama Canal Act.

Mr. J. R. KNOWLAND. No patriotic American would countenance the violation by this country of a sacred treaty obligation. On the other hand, would not the citizen be lacking in patriotism who would hastily and without most careful and painstaking investigation blindly accept an interested foreign nation's interpretation of a disputed treaty, a construction that would not only deprive this country for all time of most important commercial advantages, but would be a surrender of invaluable rights affecting the very safety of the United States?

Treaty Obligations Fully Considered by Congress.

It has been charged that when the Panama Canal bill dealing with the subject of tolls was before Congress that the question of our treaty obligations was not given the proper consideration. The truth is, and I challenge a denial, because the record bears me out, that no question has been before Congress in years in which greater interest was manifested and upon which more exhaustive debate was had.

The bill was reported to the House from the Committee on Interstate and Foreign Commerce on March 16, 1912. I presented on March 20 the minority report which upheld the right of the United States Government to pass free of toll its own ships as well as American coastwise ships. Copies of both the majority and minority reports were placed in the hands of every Member of the House accompanied with a letter calling particular attention to the toll section. It was not until May 21, two months later, that the toll provision was voted upon. While the bill was actually considered in the House but six days, the time allotted was longer than usually accorded measures other than great appropriation bills. The chief debate was upon the toll provision which naturally provoked a discussion of the concomitant question of our treaty obligations. The amendment providing free tolls for our American coastwise ships was adopted on roll call by a majority of 19. This vote carries with it a particular significance when we consider that the majority of the committee in charge of the bill opposed free tolls, which made the fight more difficult owing to the inclination of Members to follow committee recommendations as a matter of regularity. Let it also be borne in mind that this vote was taken before either the national platforms of the Democratic or Progressive Parties had declared in favor of the policy of free tolls for American coastwise ships.

The Bill in the Senate.

The bill then went to the Senate, and on May 24 was referred to the Committee on Inter-oceanic Canals. It was not reported from that committee until June 12, and did not finally pass the Senate until August 9. In the meantime this Government was officially notified of Great Britain's protest. The vote in the Senate on the provision favoring free tolls for American coastwise ships was 44 in favor to 11 against, a decisive majority of 33. The debate in the Senate was even more exhaustive than that which took place in the House, and both in the Senate and House there was not a Member who voted for the exemption who was not firmly convinced, after careful investigation, that the enactment of the bill into law would not be in contravention of any treaty obligation. I know from personal knowledge that in the House many voted against the exemption because opposed to the policy, but still held strongly to the belief that our treaty obligations did not prevent us from favoring our own ships if we saw fit to do so.

Provisions of the Panama Canal Act to Which Great Britain Objects.

The Panama Canal act of August 24, 1912, which provides for "the opening, maintenance, protection, and operation" of this American waterway is objected to by Great Britain—

First. Because of certain language contained in section 5, which provides in fixing tolls that the rate may be less for "*vessels of the United States and its citizens*" than the estimated proportionate cost of the actual maintenance and operation of the canal." The significance of this language is that it reserves to the United States the right to pass through this canal, constructed through what is practically American territory, and which will have cost our Government over \$400,000,000 before completed, its own ships of war and other Government vessels free of toll. It also leaves open for the future determination of the President of the United States the question of favoring American ships utilizing the canal in the foreign trade. The President, however, in his Panama Canal proclamation of November 13, 1912, fixed the same rate of toll for American ships in the foreign trade as for foreign ships.

Second. Great Britain objects to the language of this same section by which we fulfill our treaty obligations with the Republic of Panama in accordance with article 19 of that convention, permitting the Government of the Republic of Panama "to transport over the canal its vessels and its munitions of war in such vessels at all times without the payment of tolls."

Third. Great Britain further objects to the exemption from the payment of tolls of "American vessels engaged in the coastwise trade of the United States."

Fourth. It is attempted to limit and restrict our power even to remit tolls as is done by certain foreign nations using the Suez Canal, although the Hay-Pauncefote treaty, according to the British note of November 14, 1912, aimed "at carrying out the neutralization of the Panama Canal by subjecting it to the same régime as the Suez Canal."

Fifth. Section 11 of the act, which seeks to prevent railroad control of this waterway is questioned by Sir Edward Grey because of the fear that its provisions may apply, as they unquestionably do in my opinion, to the Canadian transcontinental railroads which have voluntarily placed themselves under the provisions of the interstate-commerce act of the United States.

Significance of British Objections.

To sum up the British objections, we are denied the right to pass free of toll our own battleships and other Government vessels; ships engaged in the coastwise trade of the United States, in which traffic the ships of England can not now engage, must pay a toll in passing through this American waterway; we are virtually asked to violate our treaty obligations with the Republic of Panama; there is a practical denial of, or at least an attempt to limit, our right to follow at Panama the practice of foreign nations in remitting tolls to merchant ships through the Suez Canal, thus placing this country at a disadvantage, and finally, in reference to the excellent provisions of section 11, we are threatened with a protest if Canadian steamships owned by Canadian railroads, which railroads have voluntarily come under the interstate-commerce act and thus subjected themselves to the same restrictions and regulations as American railroads, are to be amenable to the same laws. Was there ever a more striking example of inconsistency? Equality of treatment demanded for British shipowners in sharing benefits, but a protest against equal treatment when the act imposes restrictions applying to American shipowners!

I call attention in detail to these British objections because there are evidently many citizens who have been led to believe that the protest refers only to the exemption of American coastwise ships. By this brief statement it can be appreciated that the protest is more far-reaching and consequential.

British Protest Inspired by Canadian Railroads.

It is generally believed in Washington that the British protest was due to the action of Canadian railroad officials. Prior to the receipt of the first English note certain Government officials of Canada visited England, and we were informed by cable dispatches printed in the newspapers that they took up this question *with particular reference to the provisions of section 11, the railroad section*. Of course, they had the sympathy and active support of American transcontinental railroad interests, which interests are now engaged in urging the repeal of the objectionable provisions of the canal act, namely, sections 5 and 11. I am fair and frank enough to admit that many excellent citizens, advocates of peace—and I am a peace advocate and in favor of arbitration, as I will show later—favor repeal because of the belief, and in some instances solely upon the authority of certain Americans, that we have violated a treaty. I am constrained to direct attention to the fact that there are representatives of powerful interests favoring repeal who are crying "live up to our treaty obligations," but who are, I fear, far less interested in this phase of the question than they are in the more important consideration of preventing the canal from becoming too great a competitor of the transcontinental railroads.

Analysis of Situation.

Article 3, paragraph 1, of the Hay-Pauncefote treaty, which it is claimed we violate, reads as follows:

That the canal shall be free and open to the vessels of commerce *and of war* of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect to the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

I have always contended that this section simply bound us as the owners of the canal to treat all foreign nations fairly, preventing discrimination in favor of one foreign nation as against another. The use of the words "vessels of war" to my mind is conclusive evidence that the word "vessels" referred exclusively to foreign nations, for it is inconceivable and a reflection upon the patriotism of the framers of the treaty that the United States would foreclose its right to pass free of toll through its own waterway warships as well as lighthouse tenders, revenue cutters, transports, and other craft. Realizing the force of this argument the opponents of exemption now say that we must consider this section in connection with certain language of the Clayton-Bulwer treaty (which many had supposed was superseded by the Hay-Pauncefote convention) contained in article 8, which still compels us to carry the burden of that instrument. What is the meaning of neutralization? Many authorities contend, and I think rightfully, that neutralization can not by any strained construction be inferred to mean conditions of traffic, but relates only to conditions of war.

Interpretation of Senators Present When Hay-Pauncefote Treaty Was Pending.

The contention has been made that the Senate understood that the words "all nations" included the United States and, with this conception of the treaty, voted down an amendment which in specific language reserved to the United States the right to exempt American coastwise ships from the payment of tolls. They neglect to mention that several amendments were decisively rejected that permitted us to fortify the canal, their rejection being due to the belief on the part of Senators that we had that right without such a provision. Evidence which I will now submit proves that the same opinion prevailed touching our right to exempt American coastwise shipping.

The Bard Amendment.

I have here a letter from Senator Bard, who resides in California, which is conclusive. I will read the following extracts from this letter:

When my amendment was under consideration *it was generally conceded* (the italics are his) by Senators that even without that specific provision the rules of the treaty would not prevent our Government from treating the canal as part of our coast line, and consequently could not be construed as a restriction of our interstate commerce, forbidding the discrimination in charges for tolls in favor of our coastwise trade, and this conviction contributed to the defeat of the amendment.

We will not rest our case in this particular upon the statement of the author of the amendment, but will quote a Senator who voted against the amendment, no less an illustrious Member of the Senate than Hon. HENRY CABOT LODGE, who was one of the 11 Senators who voted last year against exempting coastwise ships, so he must be regarded as a disinterested witness. I quote from the Congressional Record of July 17, 1912:

Mr. LODGE. Mr. President, it so happened that I was in London when the second Hay-Pauncefote treaty was made, and, although the draft was sent from this country, that treaty was really made in London. I mention this merely to show that I had some familiarity with the formulation as well as the ratification of that treaty. When the treaty was submitted by the President to the Senate, it so happened that I had charge of it and reported it to the Senate.

The second Hay-Pauncefote treaty, as Senators will remember, embodied, in substance, the amendments which the Senate had made to the first Hay-Pauncefote treaty. England had refused to accept those amendments, and then the second treaty was made embodying in principle all for which the Senate had contended.

When I reported that treaty my own impression was that it left the United States in complete control of the tolls upon its own vessels. I did not suppose then that there was any limitation upon our right to charge such tolls as we pleased upon our own vessels, or that we were included in the phrase "all nations."

Again, on July 20, 1912, Senator LODGE stated on the floor of the Senate in reiteration of this view:

I voted against it in the belief that it was unnecessary; that the right to fix tolls, if we built the canal or it was under our auspices, was undoubted. I know that was the view taken by the then Senator from Minnesota, Mr. Davis, who was at that time chairman of the committee. I certainly so stated on the floor. * * *

I personally have never had any doubt that the matter of fixing tolls must necessarily be within our jurisdiction, and when I referred to our going to The Hague as useless I did not mean because our case was not a good one. I meant because, in the nature of

things, we could by no possibility have a disinterested tribunal at The Hague. It would be for the interest of every other nation involved to prevent our fixing the tolls according to our own wishes. * * * I know that was my opinion and the opinion of the chairman of the Committee on Foreign Relations at the time.

Senator CLAPP, of Minnesota, who was present when the Bard amendment was voted upon, holds similar views, as here set forth, and I quote from the Congressional Record of July 17, 1912:

I know I was here at the time, although I do not recall all of the speeches. But while some of us voted insisting, in some instances, that these things should be explicit and in others voting with the majority upon the ground that they were covered anyhow, I believe, both with reference to the coastwise trade and especially with reference to the question of fortification, that many of the votes cast against those express provisions were cast upon the theory that without them we nevertheless had the right to do them.

Mr. O'GORMAN. That the provisions were unnecessary?

Mr. CLAPP. Yes; that they were unnecessary.

Senator PERKINS, then and still a Member, stated in the Senate on August 6, 1912:

I wish to state that Senator Davis, of Minnesota, was at that time chairman of the Committee on Foreign Relations. He was, as is conceded by all, an authority on international law, and took the view stated by the Senator from New York and that stated by the Senator from Washington. There is no question about it that the rules we did make were to govern other nations than ourselves.

Situation Affecting the Republic of Panama.

As I have already set forth, the British note of November 14, 1912, protests against article 19 of our treaty with the Republic of Panama proclaimed in 1904. For over eight years there was no protest on the part of Great Britain against this alleged discrimination in favor of the ships of Panama. Why this belated protest, might we ask? The answer is plain. The contention of Great Britain would become untenable as to American ships if exception was not taken to the Panama treaty.

Senator Root, while Secretary of State, negotiated a treaty with the Republic of Colombia which permitted that Republic to pass through the canal—

Troops, material of war, and ships of war without paying any duty to the United States, even in the case of an international war between Colombia and another country.

It was ratified by the United States, but rejected by Colombia. The point I wish to make is that the then distinguished Secretary of State presumably did not consider the Colombian convention a violation of the Hay-Pauncefote treaty, although England now claims that a similar treaty with Panama is in contravention of treaty rights.

Similar Question Passed Upon by the Supreme Court.

One phase of this canal controversy has been directly passed upon by the Supreme Court of the United States, the question of exempting coastwise ships. Mr. Justice White, now Chief Justice, wrote the opinion. It is the case of *Olson v. Smith* (195 U. S., 332), in which the court held that the State law exempting American coastwise vessels from pilotage charges was not in violation of the treaty, which provided that "no higher or other duties or charges shall be imposed in any ports of the United States on British vessels than those payable in the same port by vessels of the United States." The point of this decision bearing upon the present question at issue, namely, the contention that British ships would not be discriminated against by the canal act because they are now barred by law from engaging in coastwise traffic, is as follows:

Nor is there merit in the contention that as the vessel in question was a British vessel, coming from a foreign port, the State laws concerning pilotage are in conflict with the treaty between Great Britain and the United States. Neither the exemption of coastwise steam vessels from pilotage resulting from the law of the United States nor any lawful exemption of coastwise vessels created by the State law concerns vessels in the foreign trade, and therefore any such exemptions do not operate to produce a discrimination against British vessels engaged in foreign trade and in favor of the vessels of the United States in such trade. In substance, the proposition but asserts that because by the law of the United States steam vessels in the coastwise trade have been exempt from pilotage regulations, therefore there is no power to subject vessels in foreign trade to pilotage regulations, even though such regulations apply without discrimination to all vessels engaged in such foreign trade, whether domestic or foreign.

Tolls Just and Equitable Regardless of Exemption.

The point raised by Great Britain that by exempting coastwise ships we might be placing a greater burden upon that nation has been fully answered by Secretary Knox. If we had levied a toll sufficient to pay interest upon the investment as well as cover expenses of maintenance and operation, Great Britain might have had cause to complain, but in framing the act we had in mind a toll that would attract traffic and at the same time pay the expenses of maintenance and operation. The total cost of operation and maintenance, including sanitation and civil government, as carefully estimated by Col. Goethals, will not exceed \$4,000,000 annually.

The tonnage for 1914-15 when the canal is opened, is estimated at 10,500,000 tons. Of this but 1,160,000 net register tons are estimated as coastwise. Deducting this from the total leaves 9,340,000 tons, and with a toll of \$1.20, which is in accordance with the President's proclamation, the annual income will be \$11,208,000, over seven millions in excess of the cost of operation and maintenance. The coastwise exemption in no way, either directly or indirectly, will affect the charges to Great Britain. We have been most fair in our dealing with foreign nations as to charges.

Foreign Ships to Receive Chief Benefit of Waterway.

Foreign ships will derive the chief benefit from the canal because we have practically no American ships in the foreign trade. Ninety-one per cent of our foreign commerce is carried in foreign ships. Unless we grant some favors to our own ships in the coastwise trade our benefit will be small. I know it is contended that remission of the toll will be so insignificant as affecting a ton of freight as to be negligible. If so, then what great anxiety for repeal? If a ship with a 7,000 ton net register capacity passing between New York and San Francisco pays a toll of \$8,400, some one must pay, and it will be hard to make American consumers and producers believe that they will not assume the burden. If a ship is half loaded the toll upon each ton of freight will double, because the ship pays in accordance with its total net register capacity.

Free Tolls a Benefit to Interior of Country.

In my opinion it will be the great interior of the United States that will profit chiefly because of free tolls, and particularly those sections drained by the mighty navigable rivers. Every burden placed upon traffic will impair the usefulness of the canal as a competitive route and narrow its benefits geographically. Every reduction forced by sea competition will be reflected upon rail rates throughout the entire country, as has always been the case. The output of American shipyards, according to the Department of Commerce, will be greater during the current fiscal year than for many years past. Not one of these ships I am informed is for the foreign trade, but are all to engage in the coastwise traffic. This will bring about the keenest competition, particularly in view of the fact that railroad owned or controlled ships are barred from the canal, and be a guaranty that to the American people will inure the chief benefit of free tolls. This great activity in shipbuilding should carry some significance.

An Impartial Arbitral Tribunal Possible.

While I am a Californian it does not follow, even in view of recent happenings in my native State, that I am particularly belligerent. A serious contention with Great Britain over this question is not probable. A mere suggestion of war is abhorrent. While many who hold similar views to mine upon the abstract question of our right to control the canal are strongly opposed to submitting this question—a question which I will admit largely concerns a domestic policy—to arbitration, I will frankly state I do not go so far. A fair arbitral tribunal should be possible for the determination of this question if it can not be settled by diplomacy. The Hague would not be such a body, in my opinion. The common sense of the American and English people should enable these English-speaking nations to agree upon impartial arbitrators. Before such a body our case is so strong we have nothing to fear.

Repeal of Law Inadvisable.

To repeal the toll provision at this time would be a humiliating acknowledgment that after expending \$400,000,000 in the construction of an American canal, through what is practically American territory, this Nation was estopped forever from according a single advantage to an American ship. Other nations might remit tolls to their ships as they are doing at Suez and preparing to do at Panama, but our hands would be virtually tied. We would be compelled to pay a toll upon Government ships. According to some very high authorities, we would surrender rights that might imperil our very existence as a nation. Repeal under present circumstances, when our Government, through the Department of State, has taken a position and negotiations are under way, would be most inopportune. It would be an unwarranted, uncalled-for, and abject surrender of American rights, for-reaching in its effect, and disastrous to American interests.

[Senate Doc. No. 31, 63d Cong., 1st sess.]

FROM ADDRESS OF DR. HANNIS TAYLOR BEFORE THE AMERICAN SOCIETY ON INTERNATIONAL LAW, APRIL, 1913.

Rule of Treaty Construction Known as *Rebus Sic Stantibus*.

In speaking to the question, "What is the international obligation of the United States, if any, under the treaties, in view of the British contention?" Dr. Hannis Taylor said, in part:

At the end of a century of peace between Great Britain and the United States we have a pending problem, whose solution is to test the strength of the so-called moral alliance now existing between the two grand divisions of English-speaking peoples. That moral alliance made a tremendous advance after Lord Salisbury was wise enough to accept, in 1895, our supreme arbitrating power in the New World as asserted by President Cleveland and Mr. Olney in the Venezuelan boundary controversy. Great Britain simply enlarged that policy of conciliation when, in 1901, she practically abrogated the Clayton-Bulwer treaty with the avowed purpose of advancing the construction of a ship canal "by whatever route may be considered expedient." Great Britain really had nothing to give up in abrogating that treaty which, as a whole, rested upon the assumption that Europe was to have an interest in the canal because European capitalists were to build it. The fact that not one dollar of European money was ever invested in the enterprise deprived the basic idea of the transaction of its *raison d'être*. As Great Britain's claim of a protectorate over the Mosquito Indians in Nicaragua was in open defiance of the Monroe doctrine and without legal or moral foundation her case can draw no strength from that source.

Is that statement justifiable? In a notable speech made in the Senate of the United States on January 21, 1913, the Hon. ELIHU ROOT said Great Britain had "a protectorate over the Mosquito Coast, a great stretch of territory upon the eastern shore of Central America which included the River San Juan and the valley and harbor of San Juan de Nicaragua, or Greytown. All men's minds then were concentrated upon the Nicaragua Canal route, as they were until after the treaty of 1901 was made. Great Britain did surrender her rights to the Mosquito Coast so that the position of the United States and Great Britain became a position of absolute equality." Against that statement, in which Senator Root has made a forceful summary of all that can possibly be said in favor of the British claim, I desire to set some extracts from a remarkably calm and lucid monograph entitled "Great Britain and the Panama Canal," published on April 10, 1913, at Heidelberg, by George C. Butte, who says "the writer has endeavored to consider all questions from an objective standpoint—'sachlich,' as the Germans expressively say. This has been made the more possible because the writer, being in a 'neutral' land, has at least remained uninfluenced by local sentiment." This manifestly impartial writer, after describing the treaty of December 12, 1846, with Colombia (which, he declares, was a "defensive alliance directed against the only power that was at that time hovering about these coasts"), says:

Following the treaty of 1846 relating to the Panama route, agents of the United States were active also in negotiating with the Government of Nicaragua for the control of the Nicaraguan route (the Hise-Selva convention of June 21, 1849, and the Squier-Zepeda general treaty of September 3, 1849). To offset this diplomatic advantage Great Britain

was seizing territory on one pretext or another along the Mosquito coast and in Belize and threatening to take the port of San Juan de Nicaragua (Greytown) in order to get the strategic control over the proposed interoceanic highway by way of Lake Nicaragua. The control of this canal route, important as it was thought to be to the welfare and safety of the United States, was apparently to be won only at the cost of another vital national policy namely, that the Western Hemisphere should not be made a field of future colonization by European powers.

Will anyone attempt to deny that that is a perfectly fair statement of the conditions under which Great Britain, in open defiance of the Monroe doctrine, "seizing territory on one pretext or another along the Mosquito coast and in Belize and threatening to take the port of San Juan de Nicaragua (Greytown) in order to get the strategic control over the proposed interoceanic highway by way of Lake Nicaragua?" Whatever moral equity vested in Great Britain under the terms of the Clayton-Bulwer treaty rested upon that basis alone.

After reaching that conclusion, Mr. Butte says:

Just how much of the Clayton-Bulwer treaty, if any, was in force at the time it was suspended in 1901, and what fragments of it, if any, had any practical application to the radically changed conditions, is one of the riddles of diplomacy which some modern *Edipus* may solve. We shall in a subsequent paragraph hazard an opinion as to the meaning of the reference in the preamble of the Hay-Pauncefote treaty of Article VIII of the Clayton-Bulwer treaty. * * * No more fundamental error is committed generally by those defending the British view on the present controversy than appears in the following statement of the Government's protest. "The Hay-Pauncefote treaty does not stand alone. It was the corollary of the Clayton-Bulwer treaty of 1850." The Hay-Pauncefote treaty contains five articles, and the very first article unconditionally abrogates the treaty of 1850.

"ARTICLE I. The high contracting parties agree that the present treaty shall supersede the aforementioned convention of the 19th of April, 1850."

It would be difficult to say any more clearly that the parties intended to give that maimed and decrepit instrument a decent burial. * * * It is unreasonable to advance claims which magnify the relation and enlarge the rights of Great Britain beyond those she would have had if the canal had been constructed in 1850. In 1901 the British Government itself declared that it had no intention then of giving "to Article VIII of the Clayton-Bulwer treaty a wider application than it originally possessed." * * * The Clayton-Bulwer treaty, it should be emphasized, was never at any time in effect as to any canal route but the Nicaragua route. Before 1901 the United States was entirely free to build an isthmian canal without consulting Great Britain, by any one of the other 18 different routes that had been surveyed and declared feasible. By virtue of her treaty of 1846 with New Granada, she was directly and solely charged with the prosecution of the Panama route. Great Britain was well aware of these facts. They gave her concern. * * * We believe the meaning of the Hay-Pauncefote treaty can be found within the four corners of the treaty itself. "To go elsewhere in search of conjectures is to endeavor to elude it." From the standpoint of abstract justice, the pretension of Great Britain that she should be put on the same footing as respects the use and enjoyment of the Panama Canal as the United States seems presumptuous. The restriction which she invokes against the sovereign right of the United States to enact legislation affecting its internal affairs must appear in express language in the Hay-Pauncefote treaty. No mere implication or argumentative deduction will suffice. And if we adopt the rule Lord Clarendon applied against the United States in construing the Clayton-Bulwer treaty in the case of the Mosquito Indians, to the effect that "the true construction of a treaty must be deduced from the liberal meaning of the words employed in the framing," it will be hard indeed for Great Britain to prove her claims.

And yet far be it from me to belittle Great Britain's good and wise motives in doing all she could to advance the building of an interoceanic canal. The interests of civilization demanded it; the interests of the moral alliance between Great Britain and the United States demanded it; and she was sincerely anxious to advance both. Let us never forget that through the canal at Panama the fleets of Great Britain and the United States are to unite as a great police force for the preservation of the peace of the world. It is not a good time to quarrel just at the moment when we are about to join hands in such an undertaking. And here it may be well to remember that we have already made a bad beginning. Through a restless and unnecessary impatience we committed an unparalleled act of international violence in taking away the Canal Zone from Colombia. Despite the treaty of 1846, wherein we solemnly guaranteed her sovereignty over the Isthmus, we ended that sovereignty through a transaction which has, I fear, shocked the sensibilities of the world. Does it not, therefore, behoove us to be calm, discreet, fair-minded in dealing with the second great question of international law and diplomacy which the building of the canal has presented for solution?

Everyone who has had any diplomatic experience knows that a great deal depends upon the form in which a question of international law or diplomacy is stated. In one form it will arouse every possible antagonism; in another it will draw all minds toward conciliation. Nothing could be more unfortunate, more untactful, than the form in which the question of the canal tolls is now pending. A large body of our citizens, if not a majority of them, believe that the regulation of tolls in a canal built with \$400,000,000 of our money (without

a single foreign contribution) through our own territory is purely a domestic question with which foreign nations have nothing to do whatever. Upon that theory the Congress of the United States has acted already; it has disposed of the question upon that basis. When under those circumstances Downing Street demands the repeal of that act of Congress, no matter how respectful the terms of the demand may be, a large body of our people, probably a majority, are up in arms against what they denounce as an insolent attempt at foreign dictation. Under such conditions I feel sure that the act in question can not be repealed. If it could be, through the driving force of the party to which I belong, I believe it would wreck its future. The need of the hour is to suspend the menacing and probably hopeless contest in Congress for the repeal of the act to which Great Britain objects until diplomacy can find a path leading to compromise and conciliation.

As treaties stand upon a basis of their own, entirely apart from private contracts, the law of nations has always recognized the fact that all such agreements are necessarily made subject to the general understanding that they shall cease to be obligatory so soon as the conditions upon which they were executed are essentially altered. The principle that all treaties are concluded upon the tacit condition, *rebus sic stantibus*, clearly recognized by Grotius (Chap. XVI, s. XXV et seq.), and Vattel (Book 2, c. 13, s. 200), has been denied by no modern authority. Hall, the greatest of the recent English publicists, whose book is the *vade mecum* of the British foreign office, declares in his work on International Law (s. 116) that neither party to a treaty "can make its binding effect dependent at will upon conditions other than those contemplated at the moment when the contract was entered into; and, on the other hand, a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered." Mr. Oppenheim, now professor of international law in the University of Cambridge, has, in his great work, Volume I, page 550, section 539, said:

It is an almost universally recognized fact that vital changes of circumstances may be of such a kind as to justify a party in notifying an unnotifiable treaty. The vast majority of publicists, as well as all the Governments of the members of the family of nations, agree that all treaties are concluded under the tacit condition *rebus sic stantibus*.

In my own work on International Public Law (sec. 394) I have stated the matter in this way:

So unstable are the conditions of international existence, and so difficult is it to enforce a contract between States after the state of facts upon which it was founded has substantially changed, that all such agreements are necessarily made subject to the general understanding that they shall cease to be obligatory so soon as the conditions upon which they were executed are essentially altered.

Having thus restated the rule, it was not strange, perhaps, that I should have been the first to apply it to the construction of the Hay-Pauncefote treaty of 1901, which contemplated the building of an interoceanic canal by the United States in foreign territory. It seems to me that a radical breach of the tacit condition, *rebus sic stantibus*, occurred when in November, 1903, the Canal Zone became, by purchase, the domestic territory of the United States. It is hard to deny that by that event the tacit condition, *rebus sic stantibus*, was broken; and yet the subject is a delicate one—it should be approached with great calmness, great caution. The existence of the rule, *rebus sic stantibus*, as applied to the construction of treaties, has never been denied, so far as I know, and it is not at all likely that Great Britain will deny its existence in the present instance.

On the other hand, controversy is almost sure to arise as to its application to the facts of a particular case whenever it is invoked. As it will always be possible to invent some specious reason for invoking the rule in any case in which a treaty is at all ancient, the burden should always be cast upon the party who sets it up to demonstrate clearly that the state of facts upon which the treaty was founded have been "essentially altered."

All of the contemporaneous evidence demonstrates beyond any doubt whatever that no one contemplated the possibility of the United States acquiring the territory through which the canal was to be built when on November 18, 1901, the Hay-Pauncefote treaty was concluded. Just two years thereafter, on November 18, 1903, M. Bunau-Varilla, the accredited representative of Panama, signed with Secretary Hay the so-called treaty of Panama, which was duly ratified. By its terms it granted to the United States in perpetuity a zone of land and land under water for the construction, operation, maintenance, pro-

tection, and sanitation of the canal, of the width of 10 miles, beginning in the Caribbean Sea and extending to and across the Isthmus of Panama into the Pacific Ocean, excepting the cities of Colon and Panama. The treaty grants to the United States "all the rights, power, and authority within the zone mentioned" which the United States would possess and exercise if it were the sovereign of the territory within which the said lands and waters are located, "to the entire exclusion of the Republic of Panama of any such sovereign rights, power, and authority." Great Britain's recognition of the present situation has been thus expressed: But "now that the United States has become the practical sovereign of the canal His Majesty's Government do not question its title to exercise belligerent rights for its protection." In order to protect the condition of things fixed by the Hay-Pauncefote treaty, from disturbance from any revolution that might occur in any of the countries which the canal was to traverse, it was provided in the treaty "that no change of territorial sovereignty or of the international relations of the country or countries traversed by the beforementioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties to the present treaty."

No serious person will ever attempt so to distort these plain and explicit terms as to make it appear that they were intended to cover the then entirely unforeseen acquisition of the territory now known as the Canal Zone, by the United States. In the first place the explicit terms used exclude such an idea. The terms of the treaty fix the fact that the "change of territorial sovereignty" referred to was such change as might take place in "the country or countries traversed by the before-mentioned canal." As the country or countries to be traversed were thousands of miles from the limits of the United States, there can be no possible doubt, no possible ambiguity, as to the meaning intended. The clause was naturally inserted to guard the treaty against impairment by the not infrequent revolutionary changes that periodically occur in Latin-America. It had no possible reference to the acquisition of sovereignty by the United States, a contingency of which no one then dreamed.

Mr. Butte opens the monograph heretofore quoted with this statement:

He deceives himself grievously who believes the United States made the stupendous sacrifice of human energy and public money necessary to build the Panama Canal, "the greatest liberty man has ever taken with nature," with any other purpose in view than the national advantage of the United States—commercial and, above all, political advantage.

Through our own unaided efforts, and the expenditure of \$400,000,000 of our own money, we are about to realize the dream of centuries—a dream in which Goethe indulged as early as 1827, wishing at the same time that his life might be prolonged 50 years so that he could see it realized. What candid mind is willing to declare that the conditions under which we are now completing this great enterprise, at our own expense, through territory as completely our own as the District of Columbia, are not "essentially" different from the conditions existing in 1901 when we undertook to build the canal through foreign territory? Who can believe that if we were concluding the Hay-Pauncefote treaty to-day we would make any stipulation with a foreign power, not contributing one cent to the enterprise, to the effect that we shall not exercise the sovereign right to legislate as to our own property and our own citizens within our own territory without the consent of that foreign power, especially when we remember that the Clayton-Bulwer treaty was never in effect as to any route but the Nicaragua route?

The conclusion is irresistible that by the radical changes wrought in conditions existing at the time the Hay-Pauncefote treaty was made, through the subsequent purchase of the Canal Zone by the United States, the treaty as a whole became voidable. Or, to use the words of Prof. Oppenheim, the vital change wrought by the subsequent purchase of the Canal Zone rendered an otherwise "unnotifiable treaty" notifiable. Under the universally accepted rule of *rebus sic stantibus*, so luminously expounded by the greatest of the recent English publicists, we have the right and Great Britain has the right to call a diplomatic conference in order to make such modifications in the terms of this voidable, or "notifiable," treaty as either party may desire. We may admit, if we see fit, for the sake of the argument at least, that the expression "all nations" in article 3 of the treaty was originally intended to include the United States. If it did, we now have a perfect right, under the rule of *rebus sic stantibus* to demand a modification as the treaty, as a whole, has become voidable, or "notifiable," because the conditions upon which it was executed

have been "essentially altered" through subsequent events. There is not the slightest danger of the British foreign office denying that universally admitted rule for the construction of treaties; first, because Great Britain is estopped by the expositions of her own publicists; second, because she is estopped by her diplomatic action in conceding the principle to Russia when in 1870 that country claimed the right to be released, through subsequent events, from some of the vital provisions of the treaty of Paris relating to the Black Sea. Let us then transfer this controversy at once from the halls of Congress to the cabinets of diplomacy, where it can be dealt with dispassionately and tactfully, with an honest desire to reach a conclusion just and honorable to both nations. After many years of effort to expound, as one unbroken story, the constitutional and political history of the English people on both sides of the Atlantic, I am as devoted as any American citizen can be to the maintenance of that great moral alliance upon which depends, to so great an extent, the future peace of the world. That moral alliance, so strong in recent years, may be materially weakened in the near future by bungling mismanagement. For the moment we have the cart before the horse. Let diplomacy first make such modifications in existing legislation as may be necessary to carry out the result which diplomacy may reach.

Above all, let us prevent at this time a debate in the two Houses of the American Congress whose only fruit will be bitterness and recrimination. Mr. Butte, writing in a "neutral" land, with his mind "uninfluenced by local sentiment," has said:

Four solutions of the controversy may be considered: (1) Diplomatic negotiations which may lead to mutual concessions and an amicable settlement; (2) arbitration before the Permanent Court of Arbitration at The Hague; (3) arbitration before a commission or court composed solely of American and British subjects; (4) submission of the controverted questions to the Supreme Court of the United States. The first appears to the writer to offer the best hope of a settlement.

I believe that under existing conditions "diplomatic negotiations" offer the only hope of a settlement—of such a settlement as everyone true to the existing moral alliance between Great Britain and the United States should strive to bring about.

[From the Congressional Record, Jan. 21, 1913.]

BRITISH AUTHORITIES UPHOLD THE POSITION OF THE UNITED STATES IN CANAL CONTROVERSY.

MR. J. R. KNOWLAND. Mr. Speaker, I ask unanimous consent to insert in the Record articles written by two eminent British authorities dealing with the controverted sections of the Panama Canal act, which articles appeared in the November number of the Law Magazine and Review, a quarterly review of jurisprudence published in London.

There was no objection.

The articles above referred to are as follows:

I. The International Status of the Panama Canal.

(By Edward S. Cox-Sinclair.)

It is always difficult in the conflict of national interests to secure a calm scrutiny of any international convention. It is still further difficult when within each of the signatory States conflicting constructions may commend themselves to rival commercial interests. The difficulty is still further accentuated when, within either of the signatory States, an electoral controversy is pending, in the determination of which a potent factor may conceivably be the attitude toward the convention of one or more of the persons, or of one or more of the parties, involved in the political strife. The bases for the construction of the international conventions which control the commercial neutralization of the Panama Canal are—on all these grounds—at this juncture singularly the province of the international lawyer.

At the outset of the inquiry it is expedient to eliminate those elements which tend to obscure the consideration of main points. And in the first place, those responsible for the recent decision of the Legislature of the United States must

be assumed to have acted with honest regard to international obligations, as they presumed them to exist, equally with an appreciation of the national interests which they sought to serve. On the other hand, it must be assumed that the criticism which has been directed to that decision is based upon a sincere desire to claim nothing exceeding just consideration.

Much again has been said, with little approach to accuracy, by those who demand investigation, regarding the supposed obligation on the part of the United States to refer, as a matter of abstract opinion, the issue of the validity of the decision of the Legislature of the United States, and the construction of the international documents which such decision may affect, to any international tribunal of arbitration, whether one constituted *ad hoc* or one existing as a matter of international recognition in the shape of what is shortly known as The Hague tribunal. The latter court, gradually advancing though it may be to international acceptance, can not yet be said to have reached the point of supplanting the traditional right and efficacy of national courts to deal with questions of international treaty construction. When the United States is directed with newspaper unanimity, but with scant courtesy, to refer the abstract question of the capacity of its Legislature to act in accord with treaty obligations, one has only to consider the probable attitude of Great Britain if a similar statute of its Parliament was on similar grounds called into question. Firstly, Great Britain could point out that if the perfection of impartiality is demanded it would be difficult to constitute an international tribunal, the members of which would not be drawn from States interested in the commercial neutrality of the Panama Canal. Secondly, it could point out that its own courts were fully qualified, according to the acknowledged doctrine of international usage, to pass upon any issue involving the application of the law of nations. And thirdly, it could rest upon the immemorial practice by virtue of which an act of its legislature has not been treated as subject to the judicial review of constituted foreign opinion. It would be a courageous jurist who would aver that the Supreme Court of the United States, the ultimate arbiter of the very Constitution of its country, is ill equipped, it would be a courageous statesman who would suggest that that court could not be trusted to hold the balance fairly, for the purpose of enforcing, or at any rate of declaring, the claims of all conflicting interests.

A master of the common law of England (and incidentally Sir William Blackstone lays down also the common law of America) points out that "the law of nations (whenever any question arises which is properly the subject of its jurisdiction) is here adopted in its full extent by the common law, and is held to be part of the law of the land * * * without which it must cease to be a part of the civilized world" (4 Comm., Chap. IV); and again, a hearing must be given to Lord Mansfield (citing by incorporation very learned and irrefutable authorities), "I remember Lord Hardwicke declaring his opinion to the same effect, and denying that Lord Chief Justice Holt ever had any doubt as to the law of nations being part of the law of England." (*Triguet v. Bath* (1764), 2 Burr., 1478.) Again, Prof. Scott (*Cases on International Law*, 1906), in his preface states, "Municipal law it" (i e., international law) "was in England, municipal law it remained, and is in the United States." Illustrations might be multiplied, but the conclusion is irresistible that whatever may be the value of the other conclusions of M. Bunau-Varilla (the plenipotentiary who signed the treaty under which the United States acquired from Panama the 10-mile strip through which the canal is cut), he is right in urging that the Supreme Court of the United States is competent to test any question connected with the basic law of the canal.

It is proposed, therefore, to consider, as if it were an issue depending before the Supreme Court of the United States, the question whether the recent act of the Legislature of the United States is in contravention of the true construction of international obligations of commercial neutrality. The documents which have to be considered are naturally (a) the Clayton-Bulwer treaty of the 19th April, 1850, in so far as it was intended to control the commercial neutrality of any interoceanic canal between the Atlantic and the Pacific; (b) the Hay-Pauncefote treaty of the 18th of November, 1901, which was in contemplation of the specific canal now nearing completion, and incidentally the bearing of the Suez Canal Convention of Constantinople, signed between nine European States (including Great Britain) on the 29th October, 1888; and (c) the Bunau-Varilla treaty of the 18th November, 1903, providing for the acquisition by the United States of the 10-mile strip through which the Panama Canal is cut.

The first and third of these treaties may with propriety be considered in the first place, because they contain either matters introductory, or matters relating retrospectively, to the Hay-Pauncefote treaty itself.

The Clayton-Bulwer treaty of 1850 was largely a self-denying convention by which Great Britain and the United States undertook to refrain from assuming dominion for the purpose of interoceanic communication over any part of Central America. In so far as directly concerns the present controversy, the material parts of the Clayton-Bulwer treaty may be summarized as follows: The contracting powers proposed to set forth their intentions with reference to any means of communication by ship canal to be constructed between the Atlantic and Pacific Oceans; they bound themselves not to obtain any exclusive control over such ship canal, and not to acquire, directly or indirectly, for the subjects or citizens of the one any rights or advantages in regard to commerce or navigation through such canal which should not be offered on the same terms to the subjects or citizens of the other; they bound themselves (art. 3) to protect contractors for the making of such canal if undertaken on fair and equitable lines; they undertook (art. 4) to use their influence to procure the establishment of two free ports, one at each end of the said canal; they bound themselves (art. 5) to withdraw protection from the persons or company undertaking or managing the same, or establishing regulations concerning the traffic thereupon, in a way contrary to the spirit and intention of the convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls; they engaged (art. 6) to invite every friendly State to enter into the like stipulations, to the end that all other States might share in the honor and advantage, affirming it to be the great desire of the convention that the canal was to be constructed and maintained for the benefit of mankind on equal terms to all; they agreed (art. 7) to give their encouragement to such persons or company as should first offer to commence the same with the necessary capital. Then follows the famous article 8.

It will be observed that the contemplation of the Clayton-Bulwer treaty was the undertaking by private persons with sufficient capital, under the encouragement and protection of the high contracting parties, to create the canal, and the stipulation that after the creation of the canal the high contracting parties, with the adhesion of as many friendly States as possible, were negatively to seek no preponderating control, and affirmatively to enforce equity and equality in the treatment of the commerce, not only of the parties to that convention but of all the States throughout the commercial world.

It must, of course, be conceded by all disputants that the scope and bearing of the Hay-Pauncefote treaty, which was brought into existence 50 years after, were of a very different kind. Shortly, the main differences may be grouped as follows:

(a) The canal was not to be formed by private contractors with the benevolent encouragement of Great Britain and the United States, but was to be created wholly with the capital and through the efforts of the United States.

(b) The adhesion of States other than Great Britain and the United States was not to be invited, nor were they to be asked to enter into stipulations similar to those to which the contracted States bound themselves.

(c) Instead of the United States and Great Britain and such friendly States as adhered jointly affording their guaranty for the maintenance of neutrality, it was intended that the United States alone should be the guardian of the status of the canal. This was a matter to some extent discussed in the course of the negotiations which led up to the ratification of the Hay-Pauncefote treaty, the object of Great Britain being broadly stated to be the avoidance of the detriment of being placed in a less advantageous position than other commercial powers.

The importance of the close scrutiny of the Clayton-Bulwer treaty lies, of course, in the ascertainment of the "general principle of neutralization" thereby established. It seems expedient here to extract and define that "general principle" in so far as it can be deduced from the wording of that treaty, bearing in mind that the exclusive control over the canal is to-day no longer barred, but on the contrary assigned, to the United States. It was in the year 1850 contemplated that the canal would be a private undertaking, that the promoters and administrators of that undertaking might emanate from, and might to a certain extent be under the dominating control or influence of, Great Britain or of the United States, or of one or more of the States adhering to

and guaranteeing the convention and its enforcement, and that such dominating State might seek to acquire from the undertakers for its subjects or citizens differential rights or advantages in regard to navigation through the canal. In other words, all commercial States being regarded as potential customers of the private enterprise, it was provided that none should influence a preference to the detriment of any other. They further bound themselves to give protection and encouragement to such private undertakers who should provide capital on the one hand and avoid oppressive exactions or unreasonable tolls on the other. Their attitude was, in other words (if one may venture an analogy), that of a combination of shipping companies engaged in rival operations, jointly agreeing to finance a proposed canal undertaking on the basis of an agreement between themselves not to seek from such undertaking any exclusive advantages or preferential treatment. The essence of the neutrality bargain which within the Clayton-Bulwer treaty extends to every scheme of interoceanic communication was the maintenance of the status quo of the conditions of commercial rivalry. To this general principle we propose to return in the discussion of the precise point at issue.

A review of the material documents would be incomplete without reference to the Hay-Bunau-Varilla treaty, under which the United States acquired from the Republic of Panama, in 1903, the territorial rights to the strip of land through which the canal is cut. Under this treaty (art. 18) the canal has to be opened in conformity with the stipulations of the Hay-Pauncefote treaty. It is true that this treaty in itself throws little light on the true construction of the treaty rights of Great Britain. It, however, is clearly a convention (dealing, as it does, with the title to a portion of territory) within the cognizance of the Supreme Court of the United States.

The Hay-Pauncefote treaty of 1901 was "to remove any objection which may arise out of the convention of the 19th April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, imposing the general principle of neutralization established in article 8 of that convention." The provisions of the treaty may be summarized as follows:

Article 1 supersedes the convention of 1850 in any event for the purposes of the proposed canal, and possibly altogether. Article 2 provides that the United States shall construct, at its own cost, the canal, having the exclusive right of providing for the regulation and management thereof. Article 3 provides that the United States should adopt as the basis of the neutralization of such canal the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal: (1) The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise; such conditions and charges of traffic shall be just and equitable. (2) The United States is to be at liberty to maintain military police for the protection of the canal. (3) Provisions are added regarding the vessels of war of a belligerent. (4) No belligerent shall embark or disembark troops. (5) Waters adjacent or within 3 military miles of the canal shall be regarded as within its ambit. (6) The plant, etc., part of the canal shall enjoy immunity. Article 4 provides that no change of territorial sovereignty or of international relations of the country or countries traversed by the canal shall affect the general principle of neutralization.

The "general principle of neutralization" established by the Clayton-Bulwer treaty has been found to be the maintenance of the status quo of the conditions of commercial rivalry. The essence of the difference between the treaty of 1850 and the treaty of 1901 is to be found in the fact that, following out the analogy hazarded above, it is no longer an instance of a combination of shipowners regarding a private canal undertaking, but an agreement between two individual shipowners that one of them shall construct the canal and maintain the existing conditions of commercial rivalry without detriment to the other or to other shipowners, even though not parties to the contract, for the time being making use of the canal, and consequently observing the above rules.

It can scarcely be said that the wording of the Hay-Pauncefote treaty is happy. The unfortunate incorporation in the preamble of the provisions of

the Suez Canal convention is an instance of the evil of the process of legislation by reference. The scheme of that convention has reference to an agreement between parties in the nature of sovereign States external to the actual ownership and control of a canal owned by a commercial company, whereas the Hay-Pauncefote treaty implies the plan of a State-owned undertaking.

The present controversy has been too much the subject of recent controversy to make it necessary to set forth the exact words of the actual provision of the Legislature of the United States which are said to violate international agreement. Shortly, the main ground of objection is to the proposal to grant immunity from tolls to the coasting vessels of United States nationality passing through the canal.

It seems clear that one attractive argument used by those who take exception to the action of the United States must be ruled out. It is sought to be said that by reason of the concession to unduly favored vessels the expense of the undertaking must of necessity be borne in a larger proportion by the vessels using the canal. This is upon the assumption that the canal dues paid by vessels passing through in any one year are at least in their totality to amount to a sum representing the whole annual burden, including repayment of capital construction expenditure by means of a sinking fund, as well as the actual expenses of maintaining and working the canal. It is of course possible that the canal dues to be levied are to be calculated on this basis, but there is no treaty obligation on the part of any international parties that the canal shall be in the nature of a self-paying concern. So long as the canal dues fall within the condition of the Hay-Pauncefote treaty that they are to be "just and equitable," it seems that the United States may elect to treat the canal as a losing or as a profit-making commercial speculation.

The Panama Canal, however, will have cost in construction some £80,000,000, and this sum, with its consequent annual burden increased by all the liabilities of maintenance, working, police, and protection, is wholly a charge falling upon the finances of the United States.

Granted that the highest tolls commercially possible are levied upon ships passing through the canal, it is not reasonably probable that the undertaking will be other than a losing one from the point of view of administrative profit and loss. The real question, therefore, is whether there is any interference with the "general principle of neutralization," which involves an infringement of existing conditions of commercial rivalry.

It must be conceded that direct competition upon an unfavorable basis can not arise. The nationals of no State other than those of the United States can own vessels employed in the coasting trade of the United States. Naturally this does not conclude the question, because an extension of the coasting trade might conceivably be detrimental to ocean-borne traffic. Is such an interference with the conditions of commercial rivalry forbidden by convention?

Now, the rules to be applied to the interpretation of treaties, as laid down by William Edward Hall (*Int. Law*, 5th ed., p. 335), are few and clear. They must be construed according to the plain and reasonable sense to be attached to the ordinary meaning of words; when terms used in a treaty have a different legal sense within the two contracting States, they are to be understood in the sense which is proper to them within the State to which the conditions containing them applies; when the words of a treaty fail to yield a plain and reasonable sense by recourse to the general sense and spirit of the treaty as shown by the context or by the provisions of the instrument as a whole, or by taking a reasonable instead of a literal sense of the words. No treaty, again, can be taken to restrict by implication the exercise of rights of sovereignty or property or self-preservation whilst whatever may be necessary to the enjoyment of things granted by it is understood to be tacitly given or imposed by the gift or imposition of that upon which it is attendant.

The question, therefore, must be solved in one of three ways—

(1) By the precise words of the particular provisions of the Hay-Pauncefote treaty;

(2) By the context and preamble of that treaty; or

(3) By what may be termed natural justice.

It will scarcely be contended that natural justice, unfettered by documentary construction, would refuse to the United States the privilege of the limited discrimination incorporated in the bill.

The following considerations may be briefly noted:

(a) The importance to the United States of the encouragement of their coasting trade compared with its relative unimportance to other States using the canal. Compare the percentage of ocean-borne goods carried by American ships in the year of the Clayton-Bulwer treaty with that appearing in the Navigation Report for the year preceding the Hay-Pauncefote convention and it will be found to have declined from 75.2 per cent to 9.3; that is to say, a reduction of from nearly four-fifths to under one-tenth. Compare, on the other hand, the increased statistics during the same period of the coasting trade, and the trend is precisely in the opposite direction.

(b) The responsibility cast upon the United States not only in the construction and management, but also in the maintenance and protection of the canal.

(c) The risks, whatever they may be, inherent to every commercial undertaking, and essentially to such an enterprise—risks which deterred all comers to such an extent that the canal has only been brought into concrete being after the delay or failure of 50 years.

(d) The absence of any guaranty of monopoly of traffic across Central America, because conceivably canals and probably other means of communication—e. g., railway facilities—may be brought into active competition.

(e) There is no international convention of recognition of neutrality, except by Great Britain, and no guaranty of the maintenance of neutrality by any State whatever. Even the provision for the neutrality of alternative routes contained in the Clayton-Bulwer treaty has possibly been superseded.

(f) If there be by implication a guaranty on the part of Great Britain not to encourage or discourage the use of the canal by any system of bounty, subsidy, or the like, there is no obligation upon any other State, save that of observing the rules elaborated in the Hay-Pauncefote treaty during the actual user of the canal.

The case against the United States must therefore be based upon the strict construction of the precise words of the treaty, adopting the language of Lord Clarendon in the construction of the Clayton-Bulwer treaty in the case of the "Mosquito Indians," alleging that "the true construction of a treaty must be deduced from the literal meaning of the words employed in the framing."

It is necessary for the opponents of the United States to contend that the expression "free and open to the vessels * * * of all nations observing these rules" implies "including the nation owning and administering the canal," and that the expression "no discrimination against any such nation"—i. e., "observing these rules"—implies "or in favor of the nation which enforces these rules." It seems that this would be a strained, though perfectly possible, construction. But it is scarcely a construction of "literal meaning." Nay, more, having regard to the obvious intention to deal with the position of States external to the convention, and not even intended to signify their adherence thereto, it is submitted that such a construction is the necessary or even the reasonable one.

Equally it would appear that recourse to context and preamble would enable the United States, having regard to the "general sense and spirit," to succeed. There is no contractual undertaking by any States outside the United States on the one hand, and Great Britain on the other. There is no provision analogous to that contained in the Clayton-Bulwer treaty providing for the adherence to the convention of any third State. The whole of the advantages are to be enjoyed by any State for the time being accepting the conditions of working, without any obligation on the part of any State to remain bound to such conditions further than during periods which may be of intermittent user. Even between the actual contracting parties, Great Britain and the United States, there are no collateral or reciprocal obligations by way of consideration explicitly undertaken. Any State for the time being using the canal, and so assenting to be bound by the conditions, can, by bounty to its own vessels or in any other way not amounting to a breach of international obligations, differentiate in favor of its own vessels and against those of any other State, including the United States.

To sum up, it is reasonably arguable—

(a) That the United States can support its action on the precise words of the material articles of the treaty; that its case is strengthened by reference to the preamble and context, and that its case is difficult to challenge on grounds of general justice;

(b) That there is no international obligation to submit the construction of its legislative act to any process of arbitration; and

(c) That any aggrieved party has an appropriate, an impartial, and a competent tribunal in the Supreme Court of the United States.

II. The Panama Canal Act.

(By C. A. Hereshoff Bartlett, LL. B.)

The Republic of Panama comprises some 40,000 square miles and has a population of about 300,000. On November 18, 1903, a treaty was signed between the Republic and the United States whereby the Republic of Panama granted to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of a canal of the width of 10 miles, 5 miles on both sides of the center thereof, and extending into the Pacific Ocean and Caribbean Sea 3 miles from low water. By this treaty the Republic of Panama granted to the United States all the rights, power, and authority of a sovereign. The grant was a grant of land and sovereign rights thereover and not a mere concession or privilege. The Panama Canal Zone is a territory appurtenant and belonging to the United States. This zone is as much and as exclusively the property of the United States as are the rivers and Territory of Alaska, and is subject to such laws as the Congress of the United States may make respecting it; and, when made, such laws become the sole and only rule of action within the territory, even superseding the provisions of a treaty in conflict therewith. Congress has plenary power under the Constitution of the United States over its Territories, and its power to deal with trade or commerce in the Territories does not depend upon the authority of the interstate-commerce clause of the Constitution; and this plenary power gives to Congress the undoubted right to pass laws and make uniform regulations governing the use of its appurtenant territory.

In conformity with this power Congress in August last passed an act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone, by section 5 of which it is provided that no tolls shall be levied upon vessels engaged in the coastwise trade of the United States. After the passage of this act the British Government filed a protest thereto, alleging that the act of Congress was in violation of the Hay-Pauncefote treaty—

(a) Because it vests the President with discretion to discriminate in fixing tolls in favor of American ships and against foreign ships engaged in foreign trade, although there is nothing in the act to compel the President to make such a discrimination.

(b) Because it discriminates in favor of the coastwise trade of the United States by providing that no tolls shall be charged on vessels engaged in that trade passing through the canal.

The passage of this act and the affixing of his signature thereto by the President has raised such diversity of opinion both at home and abroad as to whether it is or is not in conflict with the Hay-Pauncefote treaty that it becomes proper to review this subject from an impartial and unprejudiced point of view, entirely aside from any question of nationality or politics.

The provision of the Hay-Pauncefote treaty involved is one of the rules adopted by the United States as the basis of the neutralization of the canal, and is as follows:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable.

It is a well-recognized principle that, like other contracts, treaties are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view to effecting the objects and purposes of the States thereby contracting. It becomes necessary, therefore, to ascertain what were the conditions and circumstances existing at the time when the Hay-Pauncefote treaty was concluded.

The Hay-Pauncefote treaty, in mentioning vessels of commerce of all nations, never contemplated such an eventuality as the United States becoming the owner

of the land covered by the waters of the canal and exercising sole and sovereign power thereover, and consequently it can not be held by any just construction to apply to conditions and circumstances so completely beyond the intention and design of the treaty. At that time the possibility of the United States constructing an isthmian canal through its own territory was never contemplated. No such contingency was thought of; it was too remote even for the mind of the most imaginative concessionaire of an interoceanic waterway. The situation regarding the building of any canal was full of complications and almost superhuman difficulties, while the rights to construct an interocean canal by the various routes were covered by a confused network of concessions—to say nothing of treaties—giving individuals and companies vested rights that could not be disregarded. The contracting parties to the Hay-Pauncefote treaty had in mind the construction of a canal under the auspices of the United States, which means nothing more than under its influence, patronage, care, and protection. The building of a canal through the Isthmus of Panama was then as far from completion as it was when the first French company failed after expending some \$100,000,000 in the work, while the advocates of the Nicaragua Canal were as confident as ever that their route was the only feasible one. So little did anyone think of the United States actually acquiring the Panama Canal Zone or building the canal on its own account that even when the representatives of the New French Co. and the Nicaragua company appeared before the Senate investigating committee they expressly declared they had all the money needed and were not seeking financial aid from the Government.

Such briefly were some of the conditions and circumstances existing when the Hay-Pauncefote treaty was concluded, but they were not the same as those existing in August, 1912, when the Panama Canal bill was passed by Congress. A revolution not only of a State but in the entire situation and phase of an interocean canal had taken place, and instead of an indifferent onlooker or guardian of neutrality the United States had become itself the indisputable owner and sovereign of the soil through which this great waterway is being built at a cost of £80,000,000, and not by capital subscribed in Europe, but by funds provided by the United States alone, not private funds, but public money derived by public taxation for public purposes.

Having referred to the existing conditions and circumstances as they were in 1901 and 1912, we will now consider the terms of the Hay-Pauncefote treaty regarding "vessels of commerce and of war of all nations."

The provision of the treaty referred to means that there shall be no discrimination by the United States against any one foreign nation, or its citizens or subjects, in favor of any other foreign nation, or its citizens or subjects, in respect of the conditions of or charges for traffic or otherwise. "On terms of entire equality" refers to the equality extended to all nations other than the United States; that is to say, it is prohibitive of the United States favoring one foreign nation as against another. Its purpose was to provide that vessels of commerce of all nations foreign to the United States should enjoy the same equality among themselves; but this is quite another thing from saying that vessels of commerce of foreign nations shall enjoy the same equality as the vessels of commerce of the United States, and that the Federal Government can not, without infringing the terms of the treaty, extend the free use of the canal even to its own vessels engaged in the coastwise trade. What else does the expression "there shall be no discrimination against any such nation" mean? It means that no attempt should be made by the Federal Government to promote the interests of one foreign power to the detriment or exclusion of another; that all foreign nations should stand together equal and alike in the use of the canal.

"On terms of entire equality" was intended to prevent the United States discriminating in favor of one foreign nation against another foreign nation. The Federal Government was laying down its own rules, not for the regulation of its own ships of war and of commerce, but for the ships of war and of commerce of the stranger beyond its ports, and it unhesitatingly declared that the canal that might be built under its auspices should be free and open to them on terms of entire equality. No advantage should be obtained by one foreign nation over another foreign nation; there should be no favoritism, no special benefit or privilege extended to one that should not be open alike to all foreign nations. This is what the provision means and nothing more. It would require the interpolation of terms not contained in the treaty itself to sustain any other construction.

There is no invidious discrimination against any one foreign nation under the Panama Canal act. All foreign nations engaged in the same commerce—over-seas trade—are treated alike; are subject to the same restrictions and are entitled to the same privileges under similar conditions. On general principles treaties as well as legislation discriminating against some and favoring others are objectionable; but treaties and legislation which in carrying out a public purpose are limited in their application—if within the sphere of their operation they affect alike all persons or objects similarly situated—are not unjust discrimination.

Specific regulations of one kind of commerce which may be necessary for its protection can never be the just ground of complaint because like regulations are not imposed upon commerce of a different kind. The discriminations which are open to objection are those where persons engaged in the same commerce and plying their trade under the same conditions enjoy different privileges. It is only then that the discrimination can be said to impair that equal right which all can claim to whom it is accorded by law.

There is no evasion of the rule of equality where all foreign vessels are subjected to the same duties and liability under similar circumstances.

The treaty could never have been intended to prevent the Federal Government from arranging and regulating its domestic or coastwise commerce, and in the use and enjoyment of its own property as it saw fit.

No such restriction could have been in view in adopting "as the basis of neutralization" a rule that the canal should be free and open to the vessels of commerce and of war of all nations on terms of entire equality. It would be absurd for the United States to solemnly declare that its own vessels of war might openly and freely navigate its own landlocked waterways and enjoy the privileges that belong to the Nation as a sovereign power in the use of its own territory. The use of the words "vessels of war" shows plainly that the word "vessels" as used referred only and exclusively to those of all nations other than those of the United States, and that the word "nations" was restricted to foreign nations; that is to say, nations foreign to the United States. What the opponents of the canal act seek to accomplish is to add to this phrase after the word "equality" the words "with its own," so that it would read "on terms of entire equality with its own." But that is precisely what was not contemplated and what was never within the minds of the contracting parties. The United States was not adopting a rule for the use of its own canal—its own enterprise and work achieved at the cost of its own national treasure—but was simply laying down a rule for the equal treatment alike of all foreign vessels in a ship canal that might be built beyond its territory, but under its supervision and direction. That is to say, it was not laying down rules to regulate its own conduct in the beneficial use and enjoyment of its own property, or abandoning what one day might belong to the Nation just as much as Porto Rico or the Philippines. No such relinquishment by the Federal Government was ever within the contemplation of those who negotiated the treaty.

It is inconceivable that the United States, when it agreed in the treaty that the canal should be free and open to the vessels of commerce of all nations, intended to recognize or to feel itself bound to recognize on terms of entire equality foreign vessels of commerce with those of its own, engaged in domestic or coastwise trade, or to so restrict its sovereign authority over its own commerce that it could not consistently with the treaty abolish tolls on its own shipping that might be entirely foreign to the conceptions of the American people and inconsistent with their commercial interests.

The Hay-Pauncefote treaty not only referred to vessels of foreign nations engaged in foreign trade, but it excluded those engaged in the coastwise trade. The contracting parties did not have these in mind in framing the treaty. The disputed provision refers to perfect equality, and therefore must necessarily include only those vessels capable of falling within this term; and the only vessels of commerce that were then, are now, or ever have been treated on the same terms of equality under the usage of nations are vessels of commerce engaged in foreign trade. Vessels of commerce following the coastwise trade have never been placed on an equality with those engaged in commerce with foreign nations, nor could they be without violating national laws or the inherent right of a nation to control its domestic shipping. There is a well-defined distinction between vessels engaged in foreign commerce and the local coastwise vessel sailing under its own nation's flag between home ports. Coastwise vessels ply their trade under different conditions from those engaged in

foreign commerce. They form a separate and distinct class; they are governed by different laws; they are subjected in their own ports to lesser duties and charges or to none at all; and they are jealously protected by their own government which, invariably by one means or another, discriminates in their favor.

Congress has always adhered to the policy of restricting domestic commerce—that is, vessels trading from one port in the United States to another port in the United States—to American vessels owned and navigated by American citizens. There is nothing special and peculiar in this legislation. It is in harmony with the policy, not only of the United States, but of every sea-bound nation, to encourage and protect under special privileges its domestic maritime trade. The same system has been observed by the treaty-making power of the Government, which was frequently given emphasis to the doctrine by express reservations in treaties.

In 1851 the United States concluded a treaty of friendship, commerce, and navigation with the Republic of Costa Rica, which contained the following article:

No higher nor other duties or payments on account of tonnage, of light or harbor dues, of pilotage, of salvage in case either of damage or shipwreck, or on account of any other local charges, shall be imposed in any of the ports of the Republic of Costa Rica on vessels of the United States than those payable in the same ports by Costa Rican vessels, nor in any of the ports of the United States on Costa Rican vessels than shall be payable in the same ports on vessels of the United States.

Nothing could be more comprehensive than this article, and standing alone it would be inferred as including vessels of every sort, both those following the over-seas commerce and those domestic vessels sailing only between home ports; and yet this treaty contained a clause declaring that the reciprocal freedom of commerce intended should not apply to the coasting trade.

The treaty of friendship, commerce, and navigation between the United States and Denmark, of 1826, said:

Nor shall higher or other charges of any kind be imposed in the ports of one party on vessels of the other than are or shall be payable in the same ports by native vessels.

But this treaty also excepted the coasting trade.

In 1887 the United States made a treaty with the Republic of Peru for the reciprocal liberty of commerce and navigation between their respective territories, which provides as follows:

No higher or other duties or charges on account of tonnage, lighthouses or harbor dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed in any ports of Peru on vessels of the United States than those payable in the same ports by Peruvian vessels, nor in any of the ports of the United States on Peruvian vessels than shall be payable in the same ports by vessels of the United States. * * * It is hereby declared that the stipulations of the present treaty are not understood as applying to the navigation and coasting trade between one port and another situated in the territories of either contracting party, the regulation of such navigation and trade being reserved, respectively, by the parties according to their own separate laws.

Like provisions are contained in many other treaties, which illustrate the universally prevailing custom among nations to distinguish between the vessels of a nation and the vessels of a nation engaged in the coasting trade. The terms "vessels of a nation," or even "vessels," as used in treaties, have received among commercial countries their own interpretation by long-continued custom and acquiescence, and are universally accepted as not embracing vessels other than those plying between one foreign country and another, so that in the negotiation of treaties the high contracting parties have never had in contemplation coastwise vessels in laying down rules for equality of treatment of the vessels of their respective countries.

In addition to the 3 treaties above mentioned, 28 other treaties of commerce and navigation were concluded between the United States and foreign countries between the years 1825 and 1887, which expressly excepted their respective coastwise trade.

England has always carried out the same policy as that of the United States with reference to her coastwise vessels, either by safeguarding her home trade diplomatically in express exemptions in treaties or by subjecting her coastwise vessels to other and different dues and charges from vessels engaged in the over-seas trade, thus practically discriminating in favor of her own domestic marine.

In principle the two things are the same, the result being that the stranger coming from over the seas, in spite of all the pretense of uniformity, mutuality,

and equality of treatment, has to pay larger and heavier port dues than the British coastwise vessel, and this is the practice at British ports to-day, as it has always been, even in spite of the most formal treaty stipulations to the contrary. While to-day England's coastwise trade is open to ships of other nations, yet this was not always so, for at one time it was provided by law that no goods or passengers should be carried coastward from one port of the United Kingdom to another except in British ships, the same act defining what the coastwise trade was, and as late as in 1870 it was provided by act of Parliament that no goods or passengers should be carried by water from one port of Canada to another except in British ships. The whole history of English diplomacy has been uniform with that of the United States and other commercial countries, either in specifically exempting coastwise trade from its conventions and treaties, or by doing so in establishing different and other duties and charges for her coastwise marine than those imposed at the same port on vessels engaged in the over-seas trade.

It is not everyone who, looking at the map of the United States and seeing the broad extent of territory the State of Texas covers, realizes that it was only after one of the most bloody wars on record that the Texans were able in 1836 to secure their independence and declare themselves a Republic. While the political life of the Republic of Texas only continued for nine years before it became one of the States of the Federal Union, yet the principal act in its diplomatic history consisted in negotiating a treaty with England in which both countries specifically reserved their coasting trade to their national vessels. On November 13, 1840, Great Britain and the Republic of Texas, being equally desirous of affording every facility and encouragement to their respective subjects and citizens engaged in commercial intercourse with each other, concluded a treaty of commerce and navigation, signed by Viscount Palmerston and Gen. James Hamilton, which contained the following provision:

IV. The stipulations of the present treaty shall not be considered as applying to the navigation and carrying trade between one port and another situated in the dominions of one contracting party by the vessels of the other, as far as regards passengers, commodities, and articles of commerce, such navigation and transport being reserved by each contracting party to national vessels.

No country was more jealous of the foreigner indulging in her coastwise trade than was England when she opened her ports in the East Indies to American vessels. By the treaty of amity, commerce, and navigation between Great Britain and the United States of 1794 England consented that American vessels be admitted and hospitably received at all the seaports and harbors of the British territories in the East Indies and that American citizens be allowed to carry on a trade between them and the United States, such American vessels paying no other or higher tonnage duty than should be payable on British vessels when admitted into the ports of the United States. The treaty provides, however, "that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of said British territories."

This treaty was followed by the convention of 1815, to regulate commerce and navigation, which specifically mentioned the ports of Calcutta, Madras, and Bombay, in the British East Indies, as being open to American vessels, it being expressly understood, however, "that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories."

It will be noticed that the clauses in these treaties are similar to those contained in the various treaties made by the United States with other countries quoted above, and it becomes significant when we find the same provisions scrupulously inserted by England in some score of treaties, conventions, and decrees made between that country and foreign nations between the years 1826 and 1883.

It appears that the United States has expressly excepted its coastwise trade in 31 treaties with other commercial countries, while Great Britain on her part has also solemnly and diplomatically made the same reservation in 31 treaties with foreign nations, so that no fewer than 47 commercial countries among the international federation of friendly powers of the world have by treaty pronounced themselves in favor of the inviolability of home or coastwise trade from foreign intrusion; and those countries that have not so formally expressed themselves have by their local laws or immemorial custom tenaciously declined to place their coasting vessels on an equality with or in the same category as

foreign vessels. This right of a nation to dominate over its own domestic maritime trade has been of such constant and unquestioned recognition that it has become practically a principle of the law of nations. The usage of nations is the best guide in the interpretation of treaties, and if one takes this as evidence of how the treaty-making powers of the world have accepted and understood the terms: "vessels of commerce of * * * nations," or "vessels," it becomes evident that they have never in a single instance been regarded as referring to or including any vessels but those engaged in the overseas commerce and as not embracing the coasting trade. All nations have joined in establishing this principle and have insisted in perpetuating it, many under express treaty stipulations, while those nations who have not thus formally recorded their approval of the doctrine have nevertheless done so tacitly, and by themselves either by adopting laws to this effect or by applying other and different duties and charges to vessels engaged in foreign commerce than to those following the coastwise trade.

It may be argued that these treaty provisions specifically exempting coastwise vessels are evidence that Great Britain and the United States in omitting them in their treaties thereby recognized that the treaties between these countries included both foreign and coastwise vessels, but such an argument is without merit, because the fact exists to-day, as it has for generations, that England herself discriminates in favor of her own vessels engaged in the coasting trade. The treaty of 1815 provides:

That no higher or other duties or charges shall be imposed * * * in the ports of any of His Britannic Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels.

If England's interpretation of the Hay-Pauncefote treaty holds good, then how does she justify, under the language just quoted of the treaty of 1815, her discrimination in tonnage duties in favor of her coasting vessels? And yet this is precisely what she has always done and is doing to-day. No explanation or recrimination can alter the fact that Great Britain has always adhered tenaciously, like other sea-girt nations, to the policy of favoring coastwise vessels, and that wherever Britannia rules they form a class separate and distinct from vessels employed in foreign trade, and that they have always been excepted from the term "vessels" as used in all international agreements. So true is this that it would seem unnecessary to go into details, although abundant proof is at hand.

Take, for instance, the port of Bristol. Every vessel entering from or departing for the east coast of the United States of America, including ports of the United States of America in the Gulf of Mexico, pays 1s. 1½d. per register ton, while every vessel entering or departing for the Channel Islands, Ireland, the Isle of Man, or any part of Great Britain, not including Barry, Penarth, Cardiff, Newport, and other ports to the eastward of the Holmes, pays only 5d. per registered ton.

From a comparison of the foregoing port charges it appears that an American vessel of 5,000 tons on entering or departing from the port of Bristol from or for the east coast of America pays tonnage dues at the rate of 28 cents per ton, or 56 cents for entering and departing, while vessels entering or departing for the Channel Islands, the Isle of Man, or any part of Great Britain, with a few exceptions, pay only 10 cents a ton, or 20 cents for both entering and departing. At these rates an American vessel of 5,000 tons arriving from overseas is compelled to pay at the port of Bristol on entering or departing \$90 tonnage dues, or on entering and departing \$180, while if no other or higher duties or charges were imposed than those payable in the same ports on British vessels according to the treaty of 1815, then such American vessel would only have to pay \$50 on entering or departing, or \$100 on entering and departing, making a difference in the first instance of \$40 and in the second of \$80. This may not be discrimination according to English views, but it looks exceedingly like it from an American standpoint.

The rates and dues exacted at the port of Liverpool (Mersey docks and harbor board) afford some startling illustrations of this discrimination. Dock tonnage rates on vessels are imposed according to the class of voyage—that is to say, the vessel's destination. Those coming within class 6, which includes all ports on the east coast of North America, pay 1s. 4d. per ton, while those under class 2, between the Mull of Galloway and Duncans Bay Head, including the Orkney Isles and all the islands on the western coast of Scotland, and between St. Davids Head and the Lands End, including the Scilly Island and the

east coast of Ireland from Cape Clear to Malling Head, pay 4½d. per ton, and those included in class 3, covering all parts of the east and southern coasts of Great Britain between Duncans Bay Head and the Lands End, including the islands of Shetland and all parts of the west coast of Ireland from Cape Clear to Malling Head, including the islands on that coast, pay 6d. per ton.

Harbor rates on vessels bear out the same discrimination. Those under class 2 pay five-eighths of a penny per ton; those under class 3 pay three-fourths of a penny per ton; while vessels under class 6, embracing the trans-Atlantic trade, have to pay 1½d. per ton, or exactly double. There are also differential dock tonnage rates on vessels in which the same discrimination is carried out, as they provide for one-half of the rates specified under classes 2, 3, and 6.

Wharf rates on vessels are as follows: Under class 2, 1½d. per ton; under class 3, 1½d. per ton; and under class 6, 4d. per ton. This is a clear preference in favor of domestic coasting vessels as against vessels engaged in foreign or over-seas trade of 2½d. per ton.

These figures of the port of Liverpool furnish additional examples of the same rigid discrimination in favor of England's coasting vessels. American vessels coming across seas, for entering and leaving port, pay harbor rates of 33 cents a ton, while some coasters pay only 9 cents a ton, or 27 cents per ton less than the American vessel.

Tonnage dues at the port of London are as follows: (1) For every vessel trading coastwise or entering inward or clearing outward from or to any place north of latitude 48° 30' N., and between longitude 12° W. and 65° E. of Greenwich, for every voyage both in and out, 1d. per ton. (2) For every vessel entering inward or clearing outward beyond those limits, 1½d. per ton. (3) For vessels under 100 tons which do not pass beyond the seaward limit of the port, a halfpenny per ton. (4) Coastwise vessels not exceeding 45 tons, vessels bringing corn coastwise, fishing smacks, and lobster and oyster boats are exempt from dues.

This discrimination of 1 cent a ton for entering and clearing port in favor of coastwise vessels and against trans-Atlantic vessels may on first impression seem trifling; but when on calculation it is found that on a vessel of 5,000 tons this additional 1 cent per ton on entering and leaving port amounts to \$50, it is evident that all sense of equality between ocean-going vessels and those employed in the home trade only is completely discarded.

If England for a moment believed that the words "British vessels" or "vessels of the United States" as used in the treaty of 1815 included or was ever intended to include coasting vessels, she would not have established and enforced differential rates at her various ports in favor of coasting vessels, for that would then be a flagrant violation of the rights secured to vessels of the United States under the treaty. Not only this, but such an interpretation on the part of England would afford the United States to justly demand that vessels of the United States pay the same dues and charges at British ports as are exacted from British vessels engaged in the coastwise trade, instead of those largely increased and heavier dues and charges that American vessels have to pay.

But, in addition to this, Great Britain, by assent and ratification under circumstances similar to those that have arisen under the Panama Canal act, is not in a position to now insist on an interpretation of the equality clause of the Hay-Pauncefote treaty different from that in accordance with the established interpretation she herself has put upon the treaty of 1815 and of like clauses in other treaties.

The second article of the treaty of 1815 is as follows:

No higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels of the United States, nor in the ports of any of His Britannic Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels.

This treaty was to be obligatory for four years from its ratification; but it was extended for 10 years by the convention of October 20, 1818, and indefinitely extended by the convention of August 6, 1827, so that it is a subsisting treaty to-day.

It will be seen that the provision above quoted from the treaty of 1815 is as broad and comprehensive as the equality clause contained in the Hay-Pauncefote treaty and that it embraces all vessels of either country without exception or distinction as to whether they may be engaged in overseas commerce or the

coastwise trade. If, therefore, the expressions "British vessels" and "vessels of the United States" do not embrace vessels employed in the coastwise trade as England has herself interpreted the words for nearly a century, it is incomprehensible that she should now pretend in an outburst of indignation that the words "vessels of commerce of all nations" contained in the Hay-Pauncefote treaty does refer to and include those very vessels that she has always excluded under the terms "British vessels" and "vessels of the United States."

It is an interesting fact not generally known that the provision of the treaty of 1815, to which reference has been made, has been judicially interpreted by the courts of the United States in a litigation ending in a judgment rendered by the Supreme Court of the United States in 1904, which declared that a British vessel engaged in foreign commerce was not entitled under the treaty of 1815 to the exemption from paying pilotage accorded by law to American vessels engaged in the coasting trade. In the course of the judgment rendered by Mr. Justice White, he said:

Nor is there merit in the contention that as the vessel in question was a British vessel coming from a foreign port the State laws concerning pilotage are in conflict with a treaty between Great Britain and the United States providing that no higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels of the United States. Neither the exemption of coastwise steam vessels from pilotage resulting from the law of the United States nor any lawful exemption of coastwise vessels created by State law concerns vessels in the foreign trade, and therefore any such exemption does not operate to produce a discrimination against British vessels engaged in such trade. In substance the proposition but asserts that because by the law of the United States steam vessels in the coastwise trade have been exempt from pilotage regulations, therefore there is no power to subject vessels in foreign trade to pilotage regulations, even although such regulations apply without discrimination to all vessels in such foreign trade, whether domestic or foreign. (*Olsen v. Smith*, 195 U. S., 344.)

Not only has this interpretation of the treaty of 1815 been adopted and carried into practice by Great Britain for nearly a century, thus giving it the same validity as though a clause excepting coastwise trade had been therein inserted, but England's continued silence and acquiescence and failure to object to a like interpretation by the Supreme Court of the United States in the case cited is in itself an implied ratification and adoption thereof and is equivalent in its consequences to an express declaration of approval.

If, therefore, the words "British vessels" and "vessels of the United States," as used in the treaty of 1815, do not include vessels engaged in the coasting trade, as I feel has been sufficiently demonstrated, it is difficult to understand how the words "vessels of commerce of all nations," as used in the Hay-Pauncefote treaty, does include them.

[From Congressional Record, May 2, 1913.]

PANAMA CANAL TOLLS AND THE HAY-PAUNCEFOTE TREATY.

(Paper by Hon. Richard Olney, Secretary of State under Grover Cleveland, read at the annual meeting of the American Society of International Law, Washington, D. C., Apr. 25, 1913.)

In construing the Hay-Pauncefote treaty it is necessary to remember that there have been several different phases of American opinion and American policy touching the ownership, construction, maintenance, and use of the canal. The canal has always been conceived of as a work of world-wide interest and importance, which all nations without exception or discrimination should be able to use, subject, of course, to all rights of the owner of the canal, including that of charging reasonable tolls. Among the earliest declarations of policy by the United States Government, perhaps the earliest, was an intimation that the work should be accomplished, not "by the support and unassisted efforts of any one power," but "by common means and united exertions"—whether of all civilized powers or of American powers exclusively is not perhaps clear. Secretary Clay's idea that the canal be built by a combination of the powers interested seems never to have taken any real root.

This first phase was succeeded by the view that the canal should be built by the State owning the route of the canal or by a company or association having from the State the necessary concessions for that purpose. The United States was to assist by appropriate guaranties; and by the treaty with New Granada

of 1846, in consideration of New Granada's granting citizens of the United States equal treatment with citizens of New Granada as respects any mode of transit across the Isthmus, the United States guaranteed the perfect neutrality of the Isthmus and also New Granada's rights as sovereign and owner of the Isthmus.

A third phase of American opinion and policy appears four years later in a treaty then made with Great Britain. The United States was moved to enter into it by various considerations—by the improbability of the canal being built by the territorial sovereign, by Great Britain's claim of a protectorate over the eastern terminus of the Nicaraguan route then universally accepted as the most eligible route, and by the natural and reasonable belief that financiers would more readily engage in the canal enterprise if Great Britain joined the United States in becoming sponsor for the safety and neutrality of the canal and for its equal use by all nations. The outcome was the famous Clayton-Bulwer treaty, the essential features of which are these:

First. A canal built by the State owning the canal route or by its concessionaires.

Second. A compact by the parties that neither will build nor take part in building the canal, directly or indirectly, nor obtain nor maintain exclusive control over it.

Third. A specific agreement as to the modes in which both parties may aid in the construction of the canal—as by each using its influence for such construction with local governments and for the establishment of a free port at each end of the canal, and by each undertaking to protect the canal while in process and after completion to guarantee its neutrality and to thus safeguard the capital invested.

Fourth. An undertaking by each to enter into contracts with Central American States with the view to carry out the great purpose of the treaty, to wit, the construction of a ship canal between the two oceans “for the benefit of mankind and on equal terms to all,” and for the purpose of protecting the same.

Fifth. Enjoyment by the citizens or subjects of each party of the same “rights or advantages in regard to commerce or navigation through the canal,” charges and conditions of traffic to be approved as just or equitable by the Governments of the contracting parties.

Sixth. An invitation to all friendly States to join in contributing to the construction of the canal, coupled with the declaration that the equal terms and conditions secured to the citizens or subjects of the contracting parties shall be enjoyed by the citizens and subjects of every other State “*which is willing to grant thereto (to the canal) such protection as the United States and Great Britain engage to afford.*”

The two notable features of this phase of American canal policy are, *first*, the self-denying ordinance preventing the United States or Great Britain from building or controlling the canal; and, *second*, the clear recognition of the right of a State constructing on its own territory an artificial waterway like the canal to dictate the conditions of its use, as by permitting the use to some parties on conditions of their undertaking to protect the canal and denying its use to other parties not willing to undertake such protection.

The next phase of American canal opinion and policy was foreshadowed as early as 1869, when Secretary Seward officially “expressed the very deliberate conviction” (1) that “henceforth neither any foreign Government nor the capitalists of any foreign nation, except the Government and capitalists of the United States, will ever undertake in good faith to build the canal across the Isthmus of Darien”; (2) that “the neutrality most desirable for Colombia is to be found in a combination of the power, authority, and influence of the United States of America and the power, authority, and influence of the United States of Colombia to protect the canal and make it productive of the largest commercial benefit to all nations”; and (3) that “not only would the United States be unwilling to enter into an entangling alliance with other foreign nations for the construction and maintenance of a passage through the Isthmus, but also that the idea that other commercial powers could and would consent to enter into a combination with the United States of America for that purpose is impracticable and visionary.” About the same time a convention was actually negotiated at Bogota by which the United States was to build the canal. On various grounds not necessary to state the convention failed of ratification at Washington.

Hay-Pauncefote treaty leaves unimpaired, since the United States alone fixes reasonable and equitable rules for the canal traffic; since the canal may be used by all nations on no other condition than that they observe those rules; and since—as shown by the elimination from this treaty of article 3 of the unratified Hay-Pauncefote treaty of February, 1901—adherence to the treaty by the other powers is not to be invited. If by construing article 8 in connection with other articles of the Clayton-Bulwer treaty any controlling principle of neutralization is to be deduced, it is the simple requirement that the same terms shall be made to all customers of the canal, a requirement restricting the rights of the canal owner to just that extent and no more and not disabling it from treating its own shipping in any way it sees fit. The like result follows from the Constantinople convention of 1888, which is declared to be the basis of the neutralization of the canal and of the rules laid down in article 3 for its navigation. By that convention identical rules are to apply to all vessels using the Suez Canal in time of war or time of peace without distinction of flags, but “the rights of Turkey as the territorial power are reserved,” together with the sovereign rights of the Sultan and the rights and immunities of the Khedive.

It has been contended that the Senate of the United States understood the Hay-Pauncefote treaty to mean what Great Britain now claims it to mean, because of the Senate's failure to pass the Bard resolution in favor of American coastwise shipping. But the claim seems to be thoroughly disposed of by proof that the reason of the failure was the opinion of Senators that the resolution was superfluous, that nothing in the treaty prohibited the United States, as the builder and owner of the canal, from exempting its coastwise shipping from tolls. Senator Bard himself has since so stated in a letter which was publicly read in the House of Representatives. He is emphatically corroborated on that point by other Senators.

It is also contended that American vessels must pay tolls, because otherwise the reasonable and equitable tolls provided for by the treaty can not be ascertained. The contention assumes, of course, the very thing at issue, namely, that in the contemplation of the treaty and by its true construction American vessels are bound to pay tolls. But no other answer seems to be required than that, for the purpose of computing reasonable tolls for the use of the canal, it is not necessary that American vessels should pay tolls, but only that the amount they would pay if they were not exempt should be calculated and used in the computation as if paid.

To sum up the conclusions resulting from the foregoing considerations it is submitted that—

1. The United States, as builder and owner of an artificial waterway within its own territory, is entitled to dictate the conditions of its use unless and only so far as it has contracted the right of way.

2. It has made no such contract, except with Great Britain and by the Hay-Pauncefote treaty and by the clauses of that treaty which stipulate for the use of the canal by “all nations” on equal terms and for reasonable and equitable tolls.

3. As the term “all nations” comprehends not only states, but their nationals, the crucial question is: Are the words “all nations” inclusive or exclusive of the United States and its nationals?

4. The principle is well settled that a state conveys away its rights of sovereignty or property only by terms which are clear and express and are not susceptible of any other reasonable construction. If the terms are vague and of doubtful import, the presumption is against the state's intention to part with or abridge its jurisdictional or property rights.

5. Hence, as the term “all nations” as used in the treaty may be taken to mean either all without exception or all except the United States, the latter meaning is to be accepted as the true one, because the least restrictive of the normal rights and powers of the United States.

6. But it is unnecessary to rely upon presumption. The treaty assumes the United States to be the owner of a canal to be built by it on its own territory, and must be taken to have had as its natural and legitimate aim the fixing of the terms upon which other nations might use it. Except as necessarily abridged by such terms, nothing in the treaty indicates any purpose to further abridge the rights of the United States as canal builder and owner.

7. In short, the treaty is an instrument by which the proprietor of a canal fixes and states the terms of use to its customers.

There is an utter absence of evidence that the United States regarded itself as one of its customers.

8. The neutralization proposed by the Clayton-Bulwer treaty resembles that proposed by the Hay-Pauncefote treaty only in the idea that the operating charges and rules for use of the canal shall be the same for all nations. It differs, of course, in the vital feature of conditioning such equality of terms upon protection being afforded to the canal.

9. When five out of six of the treaty rules for the use of the canal do not apply to the United States it is a reasonable conclusion that the sixth also was not meant so to apply.

10. The different phases of American public and official sentiment respecting the canal are noteworthy and not to be overlooked in construing the Hay-Pauncefote treaty.

While the United States was expecting to be merely one of the users of the canal, it strenuously insisted upon equality of rules and charges for the use of the canal and did not concern itself about the rights of the canal owner.

When the rôle of builder and owner of the canal was forced upon it, it as strenuously insisted upon complete ownership and complete control, and complete elimination of all foreign participation or control.

Its purposes and views are completely defeated if the Hay-Pauncefote treaty is to be construed according to the British contention, and the United States has lost the ordinary and normal right of the canal owner to be exempt from the tolls and charges it makes to customers.

On the grounds and in view of the considerations above stated, the United States may contend—and it is believed can rightfully contend—that the Hay-Pauncefote treaty of November, 1901, does not, as justly interpreted, prevent the United States from exempting its coastwise shipping from the payment of tolls for the use of the Panama Canal. But to the English contention that the controversy should be referred to arbitration there seems to be no sufficient answer. Both countries are firmly committed to arbitration as the best method for the settlement of international disputes. It may be safely assumed without argument that if the matter in difference is not otherwise disposed of it will be left to an arbitral tribunal. It does not follow that resort must be had or should be had to The Hague or The Hague Permanent Court of Arbitration. Our existing arbitration treaty with Great Britain, article 1, expressly excepts from reference to that court differences which “concern the interests of third parties”—and in the case of the present difference over the meaning of the Hay-Pauncefote treaty the “third parties” with interests concerned, but without legal standing in respect of them, include almost all the countries of Europe. That the present difference should not go to The Hague Permanent Court is as clear as that the parties are not bound to send it there. International arbitration derives its chief value from confidence in the arbitral tribunal and in its ability and purpose to do justice—an award lacking that confidence is not only likely to work unfortunately as regards the particular case, but also to discredit the cause of arbitration generally—and the fact must be reckoned with that in this country there is a widespread conviction which has been publicly voiced in high official circles that all Europe is interested in the success of the British contention, and that submission of the controversy to arbitration under The Hague convention would be in the nature of a farce. American sentiment on this point is no doubt in part due to the nature of the subject matter in controversy. The claim of Great Britain is, in effect, a territorial claim. The United States possesses no more costly and perhaps no more valuable piece of territory than the Panama Canal, and Great Britain's claim is that the Hay-Pauncefote treaty not only encumbers that territory with equal rights of use by all other nations, but impresses upon it a servitude by which the United States loses the free use of its own canal for its own vessels. It is rights of that nature as to which both countries are especially sensitive and which both countries have been peculiarly careful to safeguard. Thus, for territorial claims the general arbitration treaty of 1897 (perfected as such on the part of Great Britain, but killed in the United States Senate) provided a tribunal of six arbitrators, three of whom should be chosen by each party, and whose award should be final only when made by not less than five arbitrators. The same general idea governed in the case of the Alaska boundary, though the final award might be by four out of the six. A more important difference, however, is that in the case of the Alaska boundary the arbitrators were to consist of “impartial jurists of repute,” whereas by the 1897 treaty they were to be taken from the judges of the highest courts of the

respective countries. That such a tribunal should be made the interpreter of the Hay-Pauncefote treaty, if arbitration of its terms becomes necessary, and would be greatly preferable to a tribunal constituted as in the Alaska boundary controversy is unquestionable. It would be superior in dignity, in impartiality, and in general competency. It would be infinitely more likely to be regarded as beyond the reach of any but the most correct motives and influences, and the results would be infinitely more likely to command the cheerful acquiescence of both countries.

[From Senate Document No. 32, Sixty-third Congress, first session.]

PANAMA CANAL TOLLS.

The Issues Between the United States and Great Britain in Regard to Panama Canal Tolls, as Raised in the Recent Diplomatic Correspondence.

(Address by Chandler P. Anderson, formerly counselor for the Department of State, before the American Society of International Law at the morning session on Apr. 25, 1913.)

It has seemed desirable to the committee in charge of the program for this meeting of the society that, as a preliminary to the discussion of the Panama Canal tolls questions which are included in the program, a brief outline should be presented showing the exact issues between the two Governments in that controversy as raised in the diplomatic correspondence, and the arguments which have been advanced on both sides in support of their respective contentions. It is for this purpose, rather than for the purpose of weighing the value of these arguments, that this paper has been prepared.

Before taking up the issues which have been raised in the diplomatic correspondence, it is important to have in mind the following considerations:

Inasmuch as the United States and Great Britain are the only parties to the Hay-Pauncefote treaty of November 18, 1901, Great Britain alone of all nations is entitled to question the course adopted by the United States under that treaty, but even Great Britain is not entitled under the terms of the treaty to question the course adopted by the United States toward other nations with reference to the use of the canal so long as that course involves no discrimination against Great Britain. Great Britain has no authority under the treaty or otherwise to speak for other nations on the subject of the canal tolls, and is not concerned with the attitude of the United States toward other nations in dealing with this matter except as Great Britain's own interests are affected thereby. The attitude of the United States toward other nations will unquestionably be that best adapted for securing their observance of the rules adopted by the United States for the use of the canal, the purpose of which rules is to carry out the traditional policy of the United States for the neutralization of the canal. In this connection, however, it is of interest to note that there is nothing in the treaty which would prevent the United States from granting equal treatment to any other nation even if that nation does not observe the rules, the observance of which would insure equal treatment. Moreover, it is open for the United States to make with any other nation any arrangement which is mutually agreeable on the subject, and the only interest of Great Britain therein is that there shall be no discrimination against British interests.

It is clear from these considerations that any discussion between Great Britain and the United States on the subject of canal tolls must be limited to the question of discrimination against British vessels, and it will be found upon examining the diplomatic correspondence that this limitation has been recognized by Great Britain.

There has apparently been considerable confusion in the widespread discussion about canal tolls which has been going on for the past eight months in this country as to the exact contentions of both Governments and the real question at issue between them. A large part of this discussion has been directed to the question of whether the United States is not at liberty under the treaty to do what it pleases in regard to the payment of tolls by its own vessels in its own canal. As a matter of fact, this contention is not made by Great Britain, and there is nothing in the treaty which would justify any such contention. The United States is clearly entitled to exempt its own vessels, either of war or of commerce, whether engaged in the coastwise or foreign trade, from the pay-

ment of any tolls, and likewise it is entitled to refund tolls exacted from those vessels. The question at issue is not whether that can be done, but whether the United States, having exempted its own vessels from the payment of tolls, is at liberty under the treaty to exact tolls from British vessels so long as Great Britain observes the rules adopted by the United States in the treaty.

That issue is not one which should arouse bad feeling or justify the charge of bad faith on either side, for it involves at most only a question of pecuniary damages, and does not present a situation under which the United States would gain any advantage by postponing its settlement until after the canal is opened. If it should finally appear that under the treaty the United States was not entitled to impose tolls upon British vessels when United States vessels are not subjected to the same treatment, Great Britain would have a claim against the United States for the amount of the tolls improperly paid by British vessels. Clearly, therefore, it is not a case where an immediate settlement is necessary in order to prevent an irreparable injury, for there can be no irreparable injury in enforcing a law when the damages can be measured by the payment of money improperly collected. Obviously it would be more convenient for the United States to have this question determined before the canal is opened and before tolls are collected, which would have to be refunded if this question should be decided against the United States; but even if it should be so decided, either before or after the canal is opened, in either case it would remain for the United States alone to determine whether equality of treatment should be secured by imposing equal tolls upon American vessels or by exempting British vessels equally with the American vessels from the payment of tolls.

The fundamental question underlying this controversy is whether or not the rules adopted by the United States under article 3 of the Hay-Pauncefote treaty "as the basis of the neutralization of the canal" were intended to apply to the United States as well as to other nations.

If these rules are understood as not applying to the United States, then their adoption by the United States is nothing more than a declaration of policy to the effect that the United States will so regulate and manage the canal, under the authority reserved in Article II, as to insure, in accordance with the first of these rules, that "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise," and also that "such conditions and charges of traffic shall be just and equitable."

This is the interpretation which the Government of the United States has accepted as expressing the true intent and meaning of this treaty, the effect of which under this interpretation has been aptly described as insuring to other nations "conditional favored-nation treatment, the measure of which, in the absence of express stipulations to that effect, is not what the United States gives to its own nationals, but the treatment which it gives to other nations."

Great Britain, on the other hand, although apparently admitting that none of the other rules adopted by the United States as the basis of neutralization apply to the United States, nevertheless contends that the first of these rules does apply to the United States as well as to other nations, and that by adopting it the United States has imposed upon itself an obligation to treat its own vessels and the vessels of any nation observing these rules on terms of entire equality, "so that there shall be no discrimination against any such nation, or its subjects or citizens," etc. In contending for this interpretation, however, Great Britain has recognized the necessity for determining what constitutes discrimination and particularly whether or not inequality of treatment in favor of vessels of war of the United States and of vessels of commerce engaged in the coasting trade of the United States would constitute discrimination against British vessels under this clause.

So far as other nations are concerned the British position is understood to be that this clause "embodies a promise on the part of the United States that the ships of all nations which observe the rules will be admitted to similar privileges" as enjoyed by the ships of the United States and Great Britain.

In support of the British contention that the words "all nations observing these rules," as used in Rule I, include the United States, and therefore that British vessels using the canal are entitled to equal treatment with those of the United States, the only argument advanced by Great Britain is that the

general principle of neutralization established by Article VIII of the Clayton-Bulwer treaty, as the basis of which principle the United States adopted these rules, is in effect nothing more than a general principle of equality of treatment.

Before taking up this argument it is necessary to examine briefly the provisions of Article VIII of the Clayton-Bulwer treaty, and trace their connection with the present treaty. Article VIII of the Clayton-Bulwer treaty recites:

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America.

The first seven articles of that treaty related exclusively to interoceanic communications across Central America, and it was distinctly understood by Great Britain in making that treaty that the Isthmus of Panama was not regarded as a part of Central America. This article of the treaty, therefore is the only part of the treaty which had any relation to a canal across the Isthmus of Panama. The significance of this is that this article expressed the only rights Great Britain ever had in relation to the Panama Canal route, so that Great Britain has actually sacrificed nothing by abrogating the rest of the Clayton-Bulwer treaty. In other words if the Clayton-Bulwer treaty was in force to-day Article VIII is the only part of it which would apply to the Panama Canal, and so far as the effect of Article VIII has been changed by the Hay-Pauncefote treaty, it will be found that these changes have been made at Great Britain's suggestion.

The article then continues:

In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

It is evident from this clause of the article that the agreement to extend protection was a conditional one, and the condition was that charges imposed on traffic should be approved by both Governments as just and equitable, and that the canal should be open to their citizens and subjects upon equal terms.

It is clear that the right to equal treatment went hand in hand with the obligation to extend protection, but the general principle established by this article related primarily to the protection of the canal, the object being to secure its neutralization, and as an inducement to granting protection it was provided that equality of treatment should go with it. Clearly neutralization as used there meant exemption from interference, and equality of treatment was only incidental as an inducement to noninterference.

That both Governments understood that neutralization rather than equality of treatment was the general principle adopted by Article VIII of the Clayton-Bulwer treaty is evident from the fact that the preamble of the Hay-Pauncefote treaty of 1901, as well as the preamble of the earlier treaty of 1900, characterized that general principle as "the general principle of neutralization established in Article VIII of that convention." The connection established by Article VIII of that convention between the obligation to protect the canal and the right to equal treatment is also recognized and carried into the first Hay-Pauncefote treaty of 1900 by the second article of that treaty, which provides:

The high contracting parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII of the Clayton-Bulwer convention, adopt as the basis of such neutralization the following rules, etc.

The first of these rules is as follows:

The canal shall be free and open, in time of war, as in time of peace, to the vessels of commerce and of war of all nations on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise.

It will be observed that in this treaty Great Britain joined with the United States in adopting rules which were to furnish the basis of neutralization, so that in that case both Governments were equally committed to the neutralization of the canal, and the rules recognized that in consequence of such joint obligation the vessels of both Governments were entitled to equal treatment.

As part of this policy of coupling equal treatment with the obligation of protection, that treaty also provided in article 3 that—

The high contracting parties will, immediately upon the exchange of the ratifications of this convention, bring it to the notice of the other powers and invite them to adhere to it.

That treaty, it will be remembered, was rejected by the United States Senate, and was subsequently amended materially before it was agreed upon in its present form. Certain of these amendments are of the utmost significance in connection with the questions under consideration, and show conclusively that the policy which had previously been adopted with respect to the protection of the canal was completely reversed by the later treaty. The article of the earlier treaty requiring the two parties to bring it to the notice of other powers and to invite them to adhere to it was entirely omitted from the new treaty. This provision had been objected to by the Senate, and was omitted for that reason, and in consequence of its omission Great Britain insisted upon being relieved from the obligation of protecting the canal, which it had assumed in joining with the United States in adopting the rules of neutralization. The reason for relieving Great Britain of this obligation is found in a statement made by Lord Lansdowne in an instruction by him to Lord Pauncefote in the course of the negotiations wherein he says, in effect, that the amendment striking out the provision for the adherence of other powers leaves the neutrality of the canal dependent upon the guaranty of the two contracting powers, which would place Great Britain at a marked disadvantage in comparison with other powers which would not be subjected to the self-denying ordinances which Great Britain is desired to accept. Accordingly the treaty was further amended so that the United States alone, instead of the United States and Great Britain jointly, adopted the rules of neutralization, and that this change was intended to relieve Great Britain of any obligation to protect the canal is evident from the position taken by the British Government in the recent diplomatic correspondence, in the course of which it is stated:

It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the canal should attach to them in the future.

In this connection it will be remembered that the Hay-Pauncefote treaty was entered into pursuant to article 8 of the Clayton-Bulwer treaty, whereby, in order to establish a general principle, they agreed "to extend their protection by treaty stipulations to any other practicable communications" which included the Panama Canal as now constructed. The obligation to protect, as has already been shown, was conditional upon equality of treatment, and Great Britain's repudiation of responsibility for the protection of the canal would seem to be wholly inconsistent with the stipulations of article 8 above mentioned, unless it was understood that Great Britain was not to receive equal treatment with the United States under the new treaty.

The changes by which the United States alone adopted the rules, and thereby undertook the whole responsibility of upholding them and maintaining the neutralization of the canal, made some changes in the rules themselves necessary. It appears from the diplomatic negotiations which resulted in the second Hay-Pauncefote treaty that in order to make rule 1 conform to the situation resulting from the amendments above noted Great Britain had suggested that in rule 1, after the words "all nations," there should be inserted the words "which shall agree to observe these rules," so that rule 1 would then read:

The canal shall be free and open to the vessels of commerce and of war of all nations which shall agree to observe these rules.

Clearly the United States, as the Nation which adopted the rules, was the Nation with which the agreement to observe them would necessarily be made, and therefore it is evident that in proposing this amendment Great Britain understood that as a result of the proposed amendments the United States, as the Nation adopting these rules, would stand apart from all other nations, and that "all nations" referred to in these rules did not include the United States. The exact form of amendment thus proposed was not agreed upon, but instead of the words "all nations which shall agree to observe these rules" the words "all nations observing these rules" were substituted. With reference to this change, Lord Lansdowne made the following statement in the course of the negotiations:

His Majesty's Government were prepared to accept this amendment which seemed to us equally efficacious for the purpose which we had in view, namely, that of insuring that

Great Britain should not be placed in a less advantageous position than other powers, when they [the United States] stopped short of conferring upon other nations a contractual right to the use of the canal.

Having thus briefly reviewed the development of the policy of neutralization as established in article 8 of the Clayton-Bulwer treaty and as understood by the parties in the later negotiations resulting in the second Hay-Pauncefote treaty, it is convenient now to examine the argument which has been advanced by Great Britain to show that the policy of neutralization adopted by the United States in this treaty imposes upon the United States the obligation to treat British and United States vessels upon equal terms in the use of the canal. The argument, briefly, is that the word "neutralization," as used in article 3, has the same sense as in the preamble of the treaty which recites that both Governments are desirous of facilitating the construction of the canal "without impairing the 'general principle' of neutralization established in article 8" of the Clayton-Bulwer treaty, which policy of neutralization is admitted to have comprehended both equality of treatment and the obligation to protect the canal, and that inasmuch as Great Britain has now been relieved from any responsibility for the protection of the canal, neutralization must therefore refer in the treaty to a system of equal rights; therefore the United States can have no more rights than other nations, and consequently is one of the nations required to observe the rules adopted by the United States, so that Great Britain and the United States are in the same situations, and British vessels are entitled to equal treatment with the vessels of the United States.

As stated at the outset, it is not the purpose of this paper to weigh the value of the arguments advanced on either side, but in any event it would be premature to attempt to deal fully with the arguments on this point, because the Government of the United States has not as yet stated the arguments relied upon to support the position which it has taken in opposition to the British contentions. The reply of the Government of the United States to the British argument so far has been confined to the statement by Secretary Knox, in the recent correspondence on the subject, that—

This Government does not agree with the interpretation placed by Sir Edward Grey upon the Hay-Pauncefote treaty, or upon the Clayton-Bulwer treaty, but for reasons which appear hereinbelow it is not deemed necessary at present to amplify or reiterate the views of this Government upon the meaning of those treaties.

The conclusion reached by Great Britain, as above stated, that the same treatment extended to American vessels should be extended to British vessels, has been made the basis by Great Britain for objecting to certain features of the Panama Canal act adopted by Congress last year; and the views of the British Government in support of these objections have been fully presented in the recent diplomatic correspondence.

It appears from this correspondence that apart from a reservation made by Great Britain of the right to examine further one provision of the act and to raise such contentions as may seem justified only three objections are made, which may be briefly stated as follows:

(1) That under the act no tolls are to be levied upon ships engaged in the coastwise trade of the United States.

(2) That the act appears to confer upon the President authority in fixing tolls to discriminate in favor of ships belonging to the United States and its citizens as against foreign ships.

(3) That the act exempts from the payment of tolls the vessels of the Republic of Panama, pursuant to the provisions of article 19 of the treaty of 1903 between the United States and Panama.

The reply of the United States to these objections has been fully stated in Mr. Knox's note on the subject, dated the 17th of January last. It appears from that note that the position of the United States with reference to the third of the objections above enumerated is that, for reasons which depend upon considerations outside of the terms of the treaty, this question is one which must be settled between the two Governments independently of the treaty provisions. The correspondence does not fully disclose what these reasons are, but apparently they rest upon some previous discussion and understanding between the two Governments with regard to the subject which have not yet been made public, and it is therefore impossible to discuss here the arguments in support of the position of either Government on this point.

With reference to the other two objections, the United States has taken the position that if it is right in its contention that Rule I does not apply to American vessels, then the exemption from tolls of its coastwise trade and its ships of war and even its ships of commerce engaged in foreign trade would not be contrary to its treaty obligation. As has already been stated, the argument of the United States in support of this position has not as yet been presented, because it appeared to the Government of the United States that even if Rule I should be regarded as applying to American vessels, nevertheless Great Britain had failed to show that under the provisions of the canal-tolls act and the President's proclamation there was or would be any discrimination against British vessels.

In regard to the objection that under the act the President had discretion to discriminate in favor of ships of the United States or its citizens, the reply of the United States was that this as yet had not been done, and that it would be premature to discuss that question so long as it rested merely on a possibility of what might happen rather than upon an announced intention to discriminate, or some specific act of discrimination.

In this connection the United States raised the question of whether the objection under consideration was to be understood as applying to war vessels and Government vessels of the United States, and the British position on this question has not yet been announced. The significance of this question is that if Great Britain admits that Rule I does not apply to United States war vessels it amounts to an admission that it does not apply to United States vessels of commerce, for vessels of war and vessels of commerce are put on precisely the same footing in Rule I. Clearly, however, there is no point in collecting tolls from United States vessels of war, inasmuch as their payment would be merely a matter of bookkeeping in the Government accounts. Moreover, Great Britain has already admitted that the rest of the rules adopted by the United States in article 3, which chiefly relate to war conditions, do not apply to the United States, and it is perhaps difficult for Great Britain to establish a distinction justifying the application of Rule I to the United States and the application of the rest of the rules only to other nations.

In reply to the first objection—that under the act no tolls are to be levied upon ships engaged in the coastwise trade of the United States—the position taken by the Government of the United States was that, in view of the fact that no foreign vessels were permitted to engage in the coastwise trade of the United States, an exemption of American vessels engaged in that trade was in no sense a discrimination against foreign vessels so long as this exemption was restricted to bona fide coastwise trade. Great Britain has admitted that the United States is at liberty to grant a subsidy to its vessels whether engaged in coastwise or foreign trade, and apparently has admitted in principle that a subsidy may be granted indirectly by an exemption from the payment of tolls if that should be done without producing an increase in the rate of tolls imposed upon British vessels; but it is contended by Great Britain that “if any classes of vessels are exempted from tolls in such a way that no receipts from such ships are taken into account in the income of the canal there is no guaranty that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep.”

In making this contention the British Government apparently was under the impression that the President, in determining the rate of tolls, would not take into account the tonnage of American coastwise vessels, and therefore that the toll rate would be higher than if those vessels were subjected to the payment of tolls. That the British Government was under a misapprehension with regard to this matter has been clearly shown by the reply of the United States, which pointed out “that the tolls which would be paid by American coastwise vessels but for the exemption contained in the act were computed in determining the rate fixed by the President,” and the figures are given showing that the estimated net tonnage upon which the tolls fixed in the President's proclamation were based included the tonnage of American coastwise vessels.

For these reasons the Government of the United States contended that there had as yet been no discrimination, and that there was nothing in the situation to show that the United States intended to discriminate against British vessels, either by subjecting them to inequality of treatment or by imposing upon them unjust and inequitable tolls.

From the foregoing brief outline of the issues and arguments presented in the diplomatic discussion of this controversy it will be seen that it is still an open question as to whether the two Governments can not harmoniously settle their differences with regard to this treaty without resorting to arbitration. Great Britain has proposed arbitration, and the United States has not as yet accepted that suggestion, but it has not refused to do so, having taken the position that the issues between the two countries should first be more clearly defined, and that arbitration at present would be premature, because the controversy has not yet passed beyond the stage when it could profitably be dealt with by diplomatic negotiation.

To sum up the whole situation, the United States and Great Britain differ as to the meaning and effect of the treaty in its relation to certain features of the Panama Canal act. Great Britain has asked that these differences should be settled by arbitration, and the United States has replied that there is as yet no necessity for resorting to arbitration, for even under Great Britain's interpretation of the treaty it is believed that they have failed to make out a case showing any violation of treaty obligations. In other words, the United States in effect has interposed a demurrer to the British complaint and contended that even under the British interpretation of the Hay-Pauncefote treaty the provisions of the Panama Canal act, when taken in conjunction with the President's proclamation, are not in conflict with that treaty; and that the objections advanced by Sir Edward Grey do not present any questions which, under the terms of our arbitration treaty with Great Britain, can fairly be regarded as requiring submission to arbitration at the present stage of the discussion.

[From Senate Document No. 2, Sixty-third Congress, special session.]

THE PANAMA CANAL—SHALL IT BE AMERICAN OR ANGLO-AMERICAN?

(Article by Samuel Seabury, Justice of the Supreme Court of the State of New York, printed in the Outlook on March 8, 1913.)

"I commend an American canal, on American soil, to the American people." (Gen. Grant.)

"The policy of this country is a canal under American control. The United States can not consent to surrender this control to any European power." (President Hayes.)

Introduction.

As early as 1550 the idea of a canal which should unite the waters of the Atlantic and of the Pacific was publicly discussed. From that time until the present idealists have dreamed and statesmen have struggled to bring about its realization. Difficulties—physical, financial, and political—have barred the pathway which led to achievement. The treaty which the United States made with the Republic of Panama removed the legal and political obstacles in the way of commencing the task which had been so long in contemplation. Since that time the United States has acted with characteristic energy. One of the greatest engineering achievements of mankind is being carried to a successful conclusion. The cost of the canal to the Government of the United States will exceed \$400,000,000. In the near future vessels of commerce will pass through the canal from the Atlantic to the Pacific. It is estimated that within a year from the time it is opened a net tonnage of over 10,000,000 tons will use the canal. Of this tonnage, not quite one-quarter will be engaged in American coastwise trade. The Panama route will have a monopoly of the traffic of Hawaii and of the west coast of North and South America, with the exception of a small part of the trade of southern Chile, although it must compete with other routes for the large and valuable commerce of Pacific Asia and of Australia. The canal will decrease the distance from New York to San Francisco about 8,500 miles, and from New York to Australia about 4,000 miles. The saving in time for a vessel of 9 knots speed from New York to Iquique, Chile, one of the ports from which the heavy nitrate shipments are made, will be over 23 days. The trip from Liverpool to Iquique will be decreased nearly 3,000 miles. The saving of time and money which will result to those engaged in the world's commerce by the use of the Panama Canal can not be calculated.

The Panama Canal is the achievement of the United States alone. No other nation has aided in its creation. In August, 1912, the act of Congress making provision for the permanent government of the Canal Zone became a law. The law exempts coastwise trade from tolls. This comparatively unimportant provision and the provisions of the law which deny the right to use the canal to vessels owned by railway companies and those violating the provisions of the Sherman antitrust law have been made the basis of a formal protest by Great Britain on the ground that they are in conflict with the Hay-Pauncefote treaty. That protest raises questions of the utmost importance. The manner in which those questions shall be determined will profoundly affect the commercial development and national integrity of the United States.

The History of the Canal.

A brief history of the Panama Canal is essential to an understanding of the present controversy. In 1846 a treaty was entered into between the United States and Colombia, then called New Granada. The treaty gave to the United States a right of transit over the Isthmus of Panama "from the one to the other sea." The Panama Railroad, which was completed in 1855, was a result of this treaty. In 1849 the United States entered into a treaty with Nicaragua which provided for the construction of a ship canal from Greytown (San Juan), on the Atlantic coast, to the Pacific coast by way of the Lake of Nicaragua. Great Britain, claiming a protectorate over the Mosquito Indians, in whose territory the Atlantic end would be placed, insisted that it alone should dictate the terms upon which the Nicaragua route should be opened. The British claim was in defiance of the Monroe doctrine and without moral or legal basis.

Mr. Lawrence, United States minister at London, presented the protest of his Government. It was ignored. Sir Henry Bulwer, the British minister at Washington, realizing that Mr. Clayton, the Secretary of State in President Zachary Taylor's Cabinet, had been alarmed by other acts of British aggression involving the seizure of Tigre Island, ignored Mr. Lawrence and concluded the Clayton-Bulwer treaty directly with Mr. Clayton. This treaty was ratified July 5, 1850. The treaty provided that neither Great Britain nor the United States should ever obtain or maintain for itself any exclusive control over the canal or erect fortifications upon it, nor occupy or exercise any dominion over any part of Central America; and that in the event of war the vessels of Great Britain or the United States must be permitted to pass unmolested, and that both parties should guard the safety and preserve the neutrality of the canal. The treaty also provided that the parties to it had been actuated not only by the desire to accomplish a particular object, "but also to establish a general principle," and that "they hereby agree to extend their protection, by treaty stipulation, to any other practicable communication, whether by canal or railway, across the Isthmus * * * and especially to interoceanic communications * * * which are now proposed to be established by way of Tehuantepec or Panama."

By this treaty Great Britain tied the hands of the United States and reserved to herself the absolute power of obstruction. It is unnecessary to comment upon the opposition which the American people manifested to this treaty or to trace the many diplomatic controversies which arose in regard to it or to note the forcible objections which Seward, Evarts, and Blaine felt compelled to make to it. The significant fact to be here noted is that until the treaty was superseded in 1901 it presented a complete bar to the efforts of the United States to secure the building of the canal.

In 1878 the Wyse concession was made by Colombia, and subsequently a French construction company was organized under the presidency of Ferdinand de Lesseps to build the Panama Canal. The prospect of the canal under French control was cause for alarm in the United States. In a special message to Congress, March 8, 1880, President Hayes asserted that the policy of the United States required a canal under American control. Mr. Blaine, in language so forcible as not to permit of misunderstanding, pointed out that the passage of the armed vessels of a hostile nation through the Panama Canal would be no more admissible than the passage of armed forces of a hostile nation over the railway lines joining the Atlantic and the Pacific shores of the United States. The French Government gave the United States its assurance that it did not aim at political control, and expressed "its firm purpose to allow the character

of the enterprise inaugurated by M. de Lesseps to remain an essentially private one." (See the "Treaty regulations of the United States and Colombia," by John H. Latané, Ph. D., *Annals of the American Academy of Political Science*, 1903.) The failure of the French company in 1888 permanently defeated the efforts of M. de Lesseps, and the hope that the canal would be built was again deferred.

On November 18, 1901, the Hay-Pauncefote treaty was concluded. It recites the desire of the United States and Great Britain to facilitate the construction of a ship canal "by whatever route may be considered expedient" and to remove the objections arising from the Clayton-Bulwer treaty without impairing the "general principle of neutralization established in article 8 of that convention."

The first article of the treaty provided that it should supersede the Clayton-Bulwer treaty. The second article provides "that the canal may be constructed under the auspices of the Government of the United States," either at its own cost or by gift or loan of money to individuals or corporations or through subscription to or to purchase of stock and shares. This article also provides that the United States "shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal."

The third article of the Hay-Pauncefote treaty deals with the neutralization of the canal, and in its first subdivision provides that "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges shall be just and equitable."

Article 4 of the treaty provides "that no change of territorial sovereignty or of international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties to the present treaty." This clause was evidently inserted to guard against the treaty's being impaired by changes in the South American Republics, but it did not contemplate the possibility of the United States acquiring the territory through which the canal is to be pierced. A study of the treaty in connection with the convention of Constantinople and with a full understanding of the circumstances under which the treaty was made shows clearly that the acquisition of the canal territory by the United States was not foreseen by either of the contracting parties. It should be noted that nothing contained in the treaty imposes any prohibition upon either of the contracting parties from purchasing territory to be traversed by the proposed canal.

On January 20, 1902, President Roosevelt sent to Congress a message recommending the construction of the canal at Panama. His message proposed the purchase of the French rights for \$40,000,000. Congress acted upon this suggestion and appropriated \$170,000,000, and directed the President, if the consent of Colombia could not be obtained, to have the canal constructed by the Nicaragua route at a cost not to exceed \$180,000,000. The Hay-Herran treaty between the United States and Colombia was then negotiated, by which Colombia was to grant the desired privilege in return for \$10,000,000 and an annual rental of \$250,000. The terms of this proposed treaty had been agreed upon between the accredited representatives of the United States and Colombia, and the Senate of the United States on March 17, 1903, ratified the proposed treaty. The Colombian Government, however, sought to repudiate the promise of its representative, and indicated that it would ratify the treaty if it was paid \$25,000,000. When the United States refused to yield to this demand Colombia concluded that it could not "constitutionally" comply with its promise to ratify the treaty. That the alleged constitutional objection was a mere pretense is evident from the fact that it could have been overcome by a payment of \$15,000,000 more than the United States had agreed to pay and Colombia to accept. The action of Colombia in causing the proposed treaty to fail of ratification incensed and embittered the people of the State of Panama, whose interests would have been greatly promoted by the construction of the canal. The attitude of Colombia served to intensify the spirit of revolt among the people of Panama, who for many years had been treated unjustly by the Colombian Government. This last act of Colombia showed such a total disregard of the interests of the people of Panama and was instigated by motives

so sordid and odious that the State of Panama seceded from Colombia and established a provisional government. Within a short time the United States, Great Britain, and France recognized the independence of the new Republic of Panama.

On November 18, 1903, M. Bunau-Varilla, the accredited representative of Panama, and Secretary Hay signed the treaty of Panama, which was duly ratified. This treaty grants the United States in perpetuity a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of the canal of the width of 10 miles, beginning in the Caribbean Sea and extending to and across the Isthmus of Panama into the Pacific Ocean, with the exception of the cities of Panama and Colon. Certain other incidental territory and islands are also granted. The treaty grants the United States "all the rights, power, and authority" within the zone mentioned "which the United States would possess and exercise if it were the sovereign of the territory within which the said lands and waters are located, to the entire exclusion of the Republic of Panama of any such sovereign rights, power, and authority." Article 5 of this treaty grants to the United States in perpetuity a monopoly for the construction, maintenance, and operation of any system of communication, by means of canal or railway, across its territory between the Caribbean Sea and the Pacific Ocean. In return for this grant the United States guarantees to maintain the independence of the Republic of Panama and to pay Panama \$10,000,000, and from nine years after the date of the treaty to make an annual payment of \$250,000 during the life of the treaty. The eighteenth article of this treaty provides that "the canal, when constructed, and the entrances thereto, shall be neutral in perpetuity, and shall be opened upon the terms provided for by section 1 of article 3 of and in conformity with all the stipulations of the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901." In considering this provision of the Panama treaty, it is to be borne in mind that it is binding only upon the parties to it. That treaty prescribes and defines the correlative rights and duties of the United States and of the Republic of Panama. It does not enlarge the rights of Great Britain in reference to the canal. Great Britain was not a party to the Hay-Varilla treaty, and any obligation that was imposed upon the United States under it is due solely to the Republic of Panama, and is subject to any change that may be effected by mutual consent of the contracting parties.

This historical outline makes clear the steps which the United States has taken and the difficulties which it has finally overcome. The territory through which the canal is being constructed is subject solely to the sovereignty of the United States. Now that the United States has done everything requisite and necessary to make the canal available for use and has pledged itself to preserve to the commerce of the world the right to use it upon fair and reasonable terms, Great Britain comes forward to enter its protest against the exemption of American coastwise trade, with which, under existing laws, foreign nations can not compete.

The British Protest.

The Panama Canal act, providing for the government of the Canal Zone and exempting coastwise trade from tolls, was enacted after a careful and scientific inquiry by Congress into the conditions affecting the Panama Canal. On December 9, 1912, Ambassador Bryce filed with the Secretary of State of the United States a protest against certain provisions of the Panama Canal act. The protest was signed for the British Government by Sir Edward Grey. The protest is based on the contention that the provisions of the Panama Canal act contravene the provisions of the Hay-Pauncefote treaty. The particulars in which this act is claimed to be in conflict with the treaty are: (1) The provisions of section 5 of the act, which confer upon the President, within certain defined limits, the right to fix the tolls, but provide that no tolls are to be levied upon ships engaged in the coastwise trade of the United States. There is also an exemption made pursuant to article 19 of the Panama treaty, according to which the Republic of Panama has the right to transport over the canal its vessels and its troops and munitions of war without paying charges of any kind. If the United States should yield to this part of the British protest it would be necessary for it to act in violation of its treaty with the Republic of Panama. It is claimed that these provisions, first, are in conflict with the rule established in article 8 of the Clayton-Bulwer treaty of equal treatment for British and United States ships; and, second, would enable tolls to be fixed

which would not be just and equitable and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote treaty. (2) The provisions of section 11 of the act, which prohibit a railway company subject to the interstate-commerce act of 1887 from having any interest in vessels which operate through the canal, and that part of the same section which provides that a vessel permitted to engage in coastwise or foreign trade of the United States shall not be permitted to use the canal if its owner is guilty of violating the Sherman Anti-trust Act.

Both of these claims rest upon the assumption that the events which have occurred since the ratification of the Hay-Pauncefote treaty can have no effect upon the validity of that treaty. In reference to the claim based on section 11 of the act, the protest makes no argument, but calls attention to the fact that if the provisions of that section are to be deemed applicable to British ships, the British Government reserves the right to amplify its protest after further study of the question involved. The reasons which impelled Congress to enact section 1 of the act are obvious. By these provisions it was sought to prevent monopoly of transportation in the canal and thus to keep the canal open to the free competition of the commerce of the world. Experience has taught the lesson that when the same company controls the means of transportation by land and sea competition is rendered impossible.

President Taft, in an effort to place upon the Hay-Pauncefote treaty a construction which would make it adaptable to the changed conditions which have resulted since the acquisition of the Canal Zone by the United States, treated the words "all nations," used in subdivision 1 of article 3 of the Hay-Pauncefote treaty, as excluding the United States. The British protest refuses to accept this construction, and, referring to the argument of President Taft, announces plainly that "His Majesty's Government believe this statement of the case to be wholly at variance with the real question. They consider that by the Clayton-Bulwer treaty the United States has surrendered the right to construct the canal, and that by the Hay-Pauncefote treaty it recovered that right, upon the footing that the canal should be open to British and United States vessels upon equal terms." Great Britain, therefore, having explicitly refused to be bound by any construction of the treaty which recognizes and makes allowance for the changed conditions which have resulted, since the adoption of the treaty, squarely presents to the United States the alternative of adopting an American canal policy or an Anglo-American canal policy. Under the Clayton-Bulwer treaty Great Britain claimed to be a partner in the canal enterprise with the United States. Under the British protest, transmitted by Sir Edward Grey, Great Britain still claims all the benefits of a partnership, although all the burdens of the enterprise are, under the Hay-Pauncefote treaty, to be borne solely by the United States. The importance of the protest consists, not in the fact that it relates to tolls, but in the fact that it carries with it the assertion that the Hay-Pauncefote treaty exists with the same force and effect to-day that it possessed before the United States became the sovereign over the territory through which the canal is being constructed. If this claim be admitted and the words "all nations," as used in subdivision 1 of article 3 of the Hay-Pauncefote treaty, are to be regarded as including the United States, then the following consequences result:

The United States must impose the same rate of tolls upon its merchant ships, war ships, or Government vessels that it does upon those of foreign nations; it can never blockade the canal or exercise any right of war in it, even if it is itself a belligerent, and the representatives of the United States at Panama must open the locks and escort a hostile fleet through the canal; if the United States becomes a belligerent it shall not revictual or take stores in the canal, except when strictly necessary; it shall not embark or disembark troops or munitions of war in the canal territory, and its own war vessels shall not remain in the waters adjacent to the canal within the 3-mile limit for longer than 24 hours at any one time; and it can not use the plant and surroundings of the canal for any hostile purpose.

In short, if the United States should become a belligerent, it could not use its own canal for naval and military purposes, and the canal would be of no more strategic value to it than it would be to its enemy. (Judge Seabury is, of course, stating these conclusions as a *reducto ad absurdum*. The reply to this argument, made by those who advocate the maintenance of the Hay-Pauncefote treaty, is that in time of war all treaties will be abrogated, but the

whole trend of Judge Seabury's argument is that the treaty was abrogated when the United States acquired the canal territory.—The Editors.)

Indeed, in time of war, if the provisions of the Hay-Pauncefote treaty are to govern, our seacoast would be more liable to attack than it was before the canal was built. Before the canal was built the isolation of our seaboard furnished comparative protection from foreign attack. The existence of the canal will make our coast thousands of miles nearer to the shores of a foreign enemy. If the canal shall be available to us for naval and military purposes, this danger will be obviated. If it is not to be available for these purposes, then we have increased the danger of our position rather than increased our safety. One has only to read the provisions of the six subdivisions of article 3 of the Hay-Pauncefote treaty to see at a glance that if one of these subdivisions is binding upon us all are binding. The same obligation which would require us to levy equal tolls, as provided by subdivision 1, would compel us to refrain from blockading the canal or from utilizing the canal for any military or naval purpose in the manner prohibited by the other subdivisions of article 3. The British protest does not specifically claim that all of these provisions of the Hay-Pauncefote treaty were applicable at present, but it attacks a comparatively unimportant regulation of Congress upon a ground which asserts the binding effect of that treaty. The British protest makes no renunciation of rights under the treaty. It does, however, recognize that, as a result of events subsequent to the treaty, the United States has "become the practical sovereign of the canal," and that all the provisions of the treaty are not to be deemed of the same force that they possessed when the treaty was concluded. The significance of this remarkable part of the British protest will be commented upon below. For the present it is necessary only to note that even the British Government recognizes that a change in the status existing at the time the treaty was made has taken place and that it is impossible to claim that the legal effect of the treaty has not been changed.

The State of Things Which Was the Basis of the Hay-Pauncefote Treaty has Changed, and that Treaty is Now Voidable at the Option of the United States.

It is a rule of international law, recognized among nations and publicists, that all treaties are concluded upon the tacit condition *rebus sic stantibus*. If vital changes affecting the subject matter of a treaty take place, so that it can not fairly be said that the parties contracted in reference to the changed conditions, the treaty is by implication abrogated. In other words, if the parties to a treaty contract on the basis that a certain condition or fact exists, and subsequently the condition or fact in reference to which the treaty is made is changed, the treaty is extinguished, and one of the parties to it can not in good faith hold the other bound to perform all or any of its terms. The fundamental fact in reference to which the Hay-Pauncefote treaty was made was that the canal was to be constructed in territory alien to the United States. The Hay-Pauncefote treaty did not even definitely decide upon the Panama route, but provided for the construction of a ship canal to connect the Atlantic and Pacific Oceans "by whatever route may be considered expedient." The treaty contemplated merely that the canal should be constructed "under the auspices" of the United States, not in the territory of the United States. That the United States did not contemplate the actual acquisition of the territory in which the canal was to be constructed is conclusively evidenced by the fact that the Senate ratified the treaty with Colombia, which merely provided for constructing the canal "under the auspices" of the United States, and did not contemplate the cession of territory to the United States. The failure of Colombia to fulfill the promise of its accredited representative, the bitterness and spirit of revolt which that refusal engendered among the people of the State of Panama, led to the revolution which resulted in the secession of Panama from Colombia. The United States having been betrayed by Colombia, President Roosevelt, with characteristic genius, took the action which resulted in the United States securing the grant from Panama. Under that grant the Canal Zone became part of the territory of the United States and subject to its sovereignty, and the United States from that time on possessed the same exclusive rights over it that it possessed in reference to any other territory which it acquired by cession or conquest.

The Hay-Pauncefote treaty was made on the understanding that the canal was to be constructed upon alien territory. For this reason the position of the United States relative to the canal was regarded as analogous to the position of Great Britain toward the Suez Canal. Assuming that the Hay-Pauncefote treaty provides for equal rights in the canal to Great Britain and the United States, although all the burdens of building and caring for it and policing it were to devolve upon the United States, the situation becomes radically different after the territory becomes subject to the sovereignty of the United States. Suppose, merely for the sake of argument, instead of acquiring the Canal Zone in Panama, the United States abandoned that project and constructed the canal from New Orleans to San Francisco, would it be contended that the canal was subject to the provisions of the Hay-Pauncefote treaty? In legal effect and in principle the supposed case and the real case are identical. The treaty was made on the assumption that the canal was to be built in alien territory. The condition in reference to which the treaty was made never arose; and instead of the canal being built in alien territory, it was built in territory of the United States.

The juridical status of the Panama Canal is that of an artificially constructed waterway, constructed wholly by the United States for commercial and strategic purposes, entirely through territory of the United States, the exclusive right of control over which is vested in the United States. The legal position of the United States and Great Britain in reference to the canal stands, when the case is reduced to its simplest terms, thus: A and B contract that A shall endeavor to obtain an easement over the land of C, and if A succeeds, the easement shall be used equally by A and B, but without any prohibition in the contract against either A or B acquiring the fee to C's land. Subsequently C grants in fee the property to A and his heirs. The judgment of the private law of civilized states in such a case holds that the contract between A and B is no longer of any legal force or effect.

The principle asserted above—that all treaties are concluded upon the tacit condition *rebus sic stantibus*, and that, where the state of things which was the basis of the treaty and one of its tacit conditions no longer exists, the treaty becomes voidable, and either party may notify the other that it regards the treaty as abrogated—is sustained by authority. The principle was clearly recognized by Vattel (*Law of Nations*, book 2, ch. 13, sec. 200) and by Grotius (*The Rights of War and Peace*, Ch. XVI, Sec. XXV, et seq.) and, so far as I have been able to discover, is denied by none. Mr. Hall, in his work on international law, points out that neither party to an international compact "can make its binding effect dependent at his will upon conditions other than those contemplated at the moment when the contract was entered into, and, on the other hand, a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered." (Sec. 116.) Mr. Hannis Taylor says:

So unstable are the conditions of international existence, and so difficult is it to enforce a contract between States after the state of facts upon which it was founded has substantially changed, that all such agreements are necessarily made subject to the general understanding that they shall cease to be obligatory so soon as the conditions upon which they were executed are essentially altered. (*Treatise on International Public Law*, sec. 394.)

Writing upon the same subject, Mr. Oppenheim says:

It is an almost universally recognized fact that vital changes of circumstances may be of such a kind as to justify a party in notifying an unnotifiable treaty. The vast majority of publicists, as well as all the Governments of the members of the family of nations, agree that all treaties are concluded under the tacit condition *rebus sic stantibus*. (Vol. 1, p. 550, sec. 539.)

That the circumstances have changed to such an extent that some of the provisions of the Hay-Pauncefote treaty are extinguished is impliedly conceded by Sir Edward Grey in the British protest. He says:

Now that the United States has become the practical sovereign of the canal His Majesty's Government do not question its title to exercise belligerent rights for its protection.

His statement suggests that if it had been contemplated that the United States was to acquire the territory through which the canal should be constructed clauses would have been inserted in the treaty which would have established the status of the United States as similar to that accorded Turkey and Egypt in reference to the Suez Canal. It is, of course, not improbable, if the

possibility of the acquisition by the United States had been foreseen, that Great Britain would have made even this suggestion; but it ought not to be assumed that the United States would have consented to occupy toward its own canal an attitude similar to that which European powers, under the direction of Great Britain, have accorded Turkey and Egypt toward the Suez Canal.

The statement made in the British protest indicates that the next contention of Great Britain will be that the Hay-Pauncefote treaty has been constructively modified so as to make articles 10 and 13 of the Suez Canal convention applicable to the United States. However this may be, it is needless to speculate. The important circumstance now to be noted is that although Great Britain does not ask for a formal modification of the Hay-Pauncefote treaty, nor renounce any legal rights she may have under the treaty, the concession is distinctly made that the changed conditions have modified some of the provisions of the treaty. Although this concession does not define which of the stipulations of the treaty the British Government considers to have been extinguished, it apparently concedes certain belligerent rights to the United States which, if the provisions of the Hay-Pauncefote treaty were in force, the United States would not possess. There is no justification for the claim that the abrogation of the provisions of the treaty has been *pro tanto*. If the state of things which was the vital condition of the treaty no longer exists, the whole treaty justly may be abrogated. One thing is plain as to the legal effect of the treaty: Either all of its stipulations are binding upon the United States or none of them is binding. From a juridical standpoint the change which has taken place is the most fundamental that could occur. The very subject matter of the treaty, which the treaty contemplated should continue to be territory alien to the United States, has become absolutely subject to the sovereignty of the United States. To hold, under these circumstances, that all the terms of the treaty are binding upon the United States would be preposterous and does not seem to be claimed in the British protest. The same circumstances which relieve the United States of some of the terms of the treaty relieve it of all of them. It can hardly be asserted, if changes so vital occur that some of the terms of a treaty are extinguished, one of the parties to the treaty can determine which of the other provisions of the treaty shall continue to be binding upon the other party to the compact. As some of the terms of this treaty are concededly no longer binding, none of them is binding if the United States shall so elect. The Hay-Pauncefote treaty has now become voidable, and the United States is entirely justified under accepted principles of international law in notifying Great Britain that it no longer considers that treaty to be in force. If the United States is to adopt an American canal policy, this it must do. If it does not do this, it must admit the claim of Great Britain to be an equal partner with the United States in the canal enterprise. The latter course involves the establishment of an Anglo-American canal policy in direct defiance of the Monroe doctrine, and it will create an entangling alliance which in the future must inevitably be the source of dissension and strife.

Conclusion.

The question has arisen whether the controversy as to the Panama Canal should be submitted to the Tribunal of The Hague for arbitration. Sir Edward Grey, in the British protest, suggests that if the provisions of the Panama Canal act to which objection is made are not repealed the question at issue should be submitted to arbitration. This suggestion involves the consideration of two questions: First, does the arbitration treaty require the submission of the question at issue to arbitration? and, second, if it does not so require, should the United States consent to the submission of this question to arbitration?

If existing treaties require the submission of the question to arbitration, the matter is settled, and nothing remains to the United States but to adopt this course. The convention of 1899 for the arbitration of international disputes was signed by the representatives of the United States subject to a reservation which is set forth at length after their signatures. That reservation is as follows:

Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State: nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions,

Inasmuch as the Panama Canal is constructed in territory exclusively subject to the sovereignty of the United States, any question as to its control is a purely American question, as to which the United States, in signing the treaty referred to, refused to relinquish its traditional attitude. The traditional attitude of the United States is inconsistent with the submission to arbitration of any question as to a part of the territory over which its exclusive sovereignty extends. That the Monroe doctrine represents the traditional attitude of the United States will not be questioned, nor will it be seriously urged that the United States should submit to arbitration the question as to whether it should adhere to or renounce the Monroe doctrine as a part of its national policy. That doctrine involves one of the very questions which the representatives of the United States reserved the right to withhold from arbitration. It has never been a doctrine which commended itself to European statesmen, but it defines a policy essential to the development and national existence of the United States. The controversy as to the control of the Panama Canal is of precisely the same character, and the reservation made by the representatives of the United States in signing the arbitration treaty relieves the United States from submitting this question to arbitration. As to whether it would be good policy to submit this particular question to arbitration may be safely left to the good judgment of the American Congress. Congress, realizing the unfortunate experiences which the United States has had in dealing with the Panama Canal, may well hesitate to jeopardize the present position which the United States has attained by submitting so purely an American question to the arbitrament of a foreign tribunal.

The treaty of April 4, 1908, between the United States and Great Britain provides that "differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties."

This treaty imposes upon the United States no obligation to arbitrate the present controversy, because that controversy does not relate "to the interpretation of treaties existing between the two contracting parties."

It has already been pointed out that the Hay-Pauncefote treaty is now voidable and may be rendered void by the United States giving notice to Great Britain of the election so to declare the treaty. Moreover, it is plain that the present controversy falls squarely within the exception contained in the clause of the treaty quoted above. The question at issue does affect the vital interests, the independence, and the honor of the United States. It is a question which does concern the Republic of Panama, and therefore is not referable as a matter of right under this treaty. The exemption of vessels of the Republic of Panama from tolls, under the provisions of the Panama Canal act, was provided for in compliance with article 19 of the Panama treaty. The British protest is against this provision of the act. If this question is submitted to arbitration and should be determined adversely to us, the United States would be obliged either to comply with the award of the Arbitration Tribunal and violate its treaty with Panama or to violate the arbitration award and comply with its treaty with Panama. The question at issue does, therefore, "concern the interests of third parties," and is one in reference to which the treaty provides that it need not be submitted to arbitration.

The adoption of an American canal policy is in accord with the best traditions of the United States. It is the only policy which can be pursued consistent with the maintenance of the Monroe doctrine. The utterances of American statesmen which are sometimes quoted as favoring a contrary policy were utterances made on the assumption that the canal was to be built on territory alien to the United States. The position assumed by President Cleveland was based on the desire to avoid "entangling alliances" with the country through which it was supposed the canal would be constructed. The traditional attitude of the American people in reference to the canal was expressed by Gen. Grant when he said, "I commend an American canal on American soil to the American people." After a century crowded with difficulties and vicissitudes, the Panama Canal, as the result of American genius, is about to be opened to the world. It is constructed wholly on territory subject to the sovereignty of the United States, and that country is shortly to determine whether it will pursue in regard

to it an American policy or whether, disregarding the lessons of experience and in violation of American traditions, it will admit Great Britain as an equal partner in the enterprise. If an Anglo-American policy is desired, the United States will comply with the demands contained in the British protest. If an American canal policy is to be adopted, the Government at Washington will deal in no uncertain way with the British protest. The present is no time for vacillation or hesitancy. The requirements of the situation demand that the Government at Washington shall plainly inform the British Government that the conditions under which the Hay-Pauncefote treaty was concluded have vitally changed, and that that treaty is now, under the principles of international law, voidable, and give notice that the United States regards it as without force or effect.

Such action is required by every consideration of justice, and should be taken without equivocation. Any other course will involve gross injustice to the United States, and will serve only to postpone the time when the United States, in self-defense, will be compelled to take the position suggested. As the Hay-Pauncefote treaty is now voidable rather than void, the Government of the United States should see to it that no action or failure to act on its part shall be construed into a renunciation of the rights which at present, under well-settled principles, it possesses.

Just and courageous action on the part of the United States will remove all difficulties which are presented by the Hay-Pauncefote treaty and leave the pathway free for the adoption of an American canal policy. An American canal, constructed by American enterprise on American soil, subject to the absolute and exclusive control of the United States, will prove a safeguard in times of war and in times of peace will confer the greatest benefits not only upon the United States but upon all mankind.

[From Senate Document No. 40, Sixty-third Congress, first session.—House Document No. 1313, Sixty-second Congress, third session.]

PANAMA CANAL TOLLS.

(Article prepared by the law officer of the Isthmian Canal Commission, Mr. Frank Feuille, regarding tolls on the Panama Canal.)

(Jan. 28, 1913.—Ordered to be printed.)

The provision of the Panama Canal act, recently enacted by Congress, which discriminates in favor of American coastwise shipping and the vessels of the Republic of Panama, has brought forth a protest from the British Government and unfavorable comment from the press at home and abroad.

It is claimed that the United States have violated treaty obligations in exempting American ships from toll charges at the canal; that, in consenting to the Hay-Pauncefote treaty, Great Britain surrendered valuable rights held by her under the Clayton-Bulwer treaty; that without the Hay-Pauncefote treaty the United States could not build and maintain the canal alone, and that the surrender of her rights under the Clayton-Bulwer treaty constituted a valid consideration entitling Great Britain to equal treatment for her ships with those of the United States at the canal. The question is an historical one to some extent. It might be well to refer briefly to the history of the subject.

In 1850 the United States and Great Britain entered into an agreement, commonly known as the Clayton-Bulwer convention, to promote the building of a canal by the Nicaraguan route, and, when constructed, to jointly protect it against unjust detention, confiscation, seizure, or any violation whatsoever. The contracting parties also agreed that neither would erect fortifications at the canal or its vicinity, and that neither would directly or indirectly obtain the exclusive benefit of the canal or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. The Mosquito coast, over which Great Britain was then attempting to exercise jurisdiction, is situated in the vicinity of the Atlantic entrance of the proposed Nicaraguan Canal.

The United States had two purposes in view in making the convention—to stop Great Britain's encroachment upon Central American territory and to remove the obstruction at the Atlantic entrance of the canal resulting from the English assumption of jurisdiction over the Mosquito coast.

One of the important provisions of the treaty was that prohibiting any discrimination in the use of the canal in favor of either of the contracting parties as against the other. The point is covered in the following explicit language:

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the ship canal; * * * nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess with any State or Government through whose territory the said canal may pass for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one any rights or advantages in regard to commerce or navigation though the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

There are other provisions to the same effect in the treaty. It is significant that the explicit language of the Clayton-Bulwer convention in respect to equality of treatment of the contracting parties was not employed in the Hay-Pauncefote treaty. This will be discussed later on in this paper.

The convention applied to the Nicaraguan route and to Central America and not to the Panama route or South America, of which the Isthmus of Panama forms a part.

It is true that Article VIII of the treaty did obligate the parties to extend their protection by treaty stipulations to the Panama route or the Tehuantepec route, but no such treaty stipulations were ever effected.

Inasmuch as Article VIII of the Clayton-Bulwer convention is referred to in the Hay-Pauncefote treaty, it might be well to quote it here at length:

ART. VIII. The Governments of the United States and Great Britain, having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the Isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

When the Clayton-Bulwer convention was made the United States was under treaty obligations with New Granada, now Colombia, to guarantee positively and efficaciously to that Government the perfect neutrality of the Isthmus of Panama, with the view that the free transit from one to the other sea might not be interrupted or embarrassed while the treaty existed, and, in consequence, the United States also guaranteed in the same manner the rights of sovereignty and property which New Granada possessed over said territory. In other words, the United States was exercising a protectorate over the Isthmus of Panama in 1850, when the Clayton-Bulwer convention was made. In return for the protection afforded the Government of New Granada, the United States were to enjoy all the exemptions, privileges, and immunities concerning commerce and navigation which then or thereafter might be enjoyed by Granadian citizens, their vessels and merchandise; and this equality of favors was to extend to the passengers, correspondence, and merchandise of the United States in their transit across the said territory from one sea to the other upon any means of communication established or to be established.

The Clayton-Bulwer convention did not impair the treaty between the United States and New Granada. Doubtless the existence of the latter treaty caused Article VIII to be inserted in the Clayton-Bulwer convention so that by further treaty stipulations that convention could be made extensive to Panama with the consent of New Granada. Without a material modification of the treaty with the latter country, the Clayton-Bulwer convention could not have been applied to Panama.

However, no treaty stipulations for the extension of the Clayton-Bulwer convention to the Panama Canal were ever effected, and, therefore, that convention only applied to the Nicaraguan route and Central America.

The Clayton-Bulwer convention remained in existence for 51 years; that is to say, from 1850 to 1901, when it was superseded by the Hay-Pauncefote treaty, and in all that time nothing of consequence was done by Great Britain to promote the construction of the canal. Hence the claim that the Clayton-Bulwer convention had become obsolete has some merit.

No one familiar with the trend of public opinion in the United States but knows that the American people had concluded to build the canal independently of any other nation when the Hay-Pauncefote treaty was made, and had not that treaty been entered into there is no doubt that the moribund convention of 1850 would have been abrogated by our Government in response to popular demand.

The Hay-Pauncefote treaty, made in 1901, did not affect the treaty made between the United States and New Granada, or Colombia as it is now called, respecting the Isthmus of Panama. Hence, the United States, without interruption, has been under treaty obligations since 1846 to protect the Panama route and to maintain the neutrality of transit over the Isthmus. Neither the Clayton-Bulwer convention nor the Hay-Pauncefote treaty relieved the United States of the burden; and the preferential treatment accorded to the commerce of the United States across the Isthmus of Panama, in compensation for that burden, was not diminished or impaired by either of the conventions between England and the United States above mentioned. The right held by the United States under the Colombian treaty was equivalent to an easement over the Isthmus of Panama, and this easement ripened into a fee simple title when the treaty with Panama was made in 1903. Whence comes England's right to claim equal treatment with the United States at the Isthmus? She did not get it under the Clayton-Bulwer convention, nor by virtue of the Hay-Pauncefote treaty. The treaty between the United States and Panama added nothing to England's rights under the Hay-Pauncefote treaty. The Clayton-Bulwer convention and the Hay-Pauncefote treaty left the status at the Isthmus unchanged under which the United States held special commercial privileges over that territory. That the United States are now the owners of the territory, instead of being the holders of an easement, can not change the status. Hence the United States now have rights, commercial and otherwise, at the Isthmus superior to those of England, as they have had since 1846.

It is claimed by Great Britain that the consideration for superseding the Clayton-Bulwer convention was to secure equality of treatment for her ships with those of the United States at the canal. There is no such consideration expressed in the Hay-Pauncefote treaty nor in the correspondence between the two Governments leading to the making of that treaty; nor does such a consideration arise by implication from a correct reading of the instrument. But a fair construction of it would permit of the suggestion that England's prime motive was to obtain the use of a shorter route to the Pacific through a canal built without cost to her, and the neutrality of which was to be maintained by the United States singly and alone. If Great Britain's contentions were correct, the benefit to the United States from the abrogation of the Clayton-Bulwer convention would not be apparent. The English contention means that the United States renounced all benefits under the Clayton-Bulwer convention and yet retained the burdens and obligations of that instrument, not only in respect to England, but the other nations of the world as well, although they were not parties to the convention; and these burdens must be assumed in regard to a canal over which the Clayton-Bulwer convention could not have been extended without further treaty stipulations with New Granada as a party. Surely the burden is upon the party asserting such a claim to establish it by satisfactory evidence beyond doubt.

If the claim of Great Britain is conceded that she surrendered certain rights in respect to the Nicaraguan canal when she consented to the abrogation of the Clayton-Bulwer convention, she, in turn, was relieved of the joint obligation to promote the building of the canal and to protect it and maintain its neutrality when built. It is fair to assume that the latter compensated for the former. Be that as it may, Great Britain agreed to the Hay-Pauncefote treaty, and that treaty superseded the Clayton-Bulwer convention.

But Great Britain will receive other considerations of incalculable value to her for agreeing to the abrogation of the Clayton-Bulwer convention. Her tonnage in steam and sailing vessels is greater than that of the other maritime nations combined. It is not unfair to Great Britain to say that the relative advantage to come to her from the opening of the canal will be in like propor-

tion; and her great superiority over the other nations in tonnage will give her a most favored position in the trade with the west coast of this hemisphere.

She has great possessions in Asia and Australia and other part of Oceania; the Panama Canal will give her another highway to reach them.

The benefits to come to her from the canal will not stop here. We know that British America is larger than the United States, excluding Alaska, and British Columbia in the western part of Canada contains vast lumber regions and immense wheat fields which are just beginning to be developed. The opening of the canal will turn immigration toward the Canadian Pacific, and the future should bring a flourishing trade between that region and Great Britain in the exchange of manufactures for Canadian wheat and lumber.

But these are not all the advantages which England will obtain from the canal. Canada has hundreds of miles of coast on the Atlantic and three or four hundred miles of coast on the Pacific, and is traversed by transcontinental railroads. These conditions will make British America a most valuable base for the operations of the English Navy in both oceans when the canal is built and thus the efficiency of England's navy will be increased almost equally with our own.

These are some of the benefits that England is to receive from the canal. It is fair to assume that she considered them sufficient to compensate her for agreeing to the abrogation of the almost-forgotten Clayton-Bulwer convention, so that there might be no obstacle to the building of the canal by the United States. Were the Panama Canal project abandoned at this time England would probably be injured by the abandonment as much as the United States; and yet the burden of building the canal and of maintaining its neutrality thereafter is entirely on the United States. England has no obligations in that respect.

However, if we are under treaty obligations to treat England's ships on an equality with our own at the canal, it is our duty to respect them. But have we assumed such obligations? An answer to the question depends on the meaning of the Hay-Pauncefote treaty. The treaty was made in Washington on the 19th day of November, 1901. Its purpose, as declared in the preamble, was to remove any objection which might arise out of the convention of April 19, 1850, known as the Clayton-Bulwer convention, to the construction of the canal under the auspices of the United States, without impairing the "general principle" of neutralization established under Article VIII of that convention. The articles of the Hay-Pauncefote treaty are so interdependent that it is necessary to construe them together in order to get at the true meaning of the instrument, and for that purpose they are here set out in full:

ARTICLE I. The high contracting parties agree that the present treaty shall supersede the aforementioned convention of the 19th of April, 1850.

ART. II. It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations, or through subscription or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ART. III. The United States adopts as the basis of neutralization of such ship canal the following rules substantially as embodied in the convention of Constantinople, signed the 28th day of October, 1858, for the free navigation of the Suez Canal; that is to say:

"1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect to the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

"2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

"3. Vessels of war of a belligerent shall not take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the regulations in force, and with only such intermission as may result from the necessities of the service. Prizes shall be in all respects subject to the same rules as vessels of war of belligerents.

"4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

"5. The provisions of this article shall apply to waters adjacent to the canal within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than 24 hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within 24 hours from the departure of a vessel of war of the other belligerent.

"6. The plant, establishment, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be a part thereof for the purposes of this treaty, and in time of war, as in time of peace, shall enjoy complete

immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal."

ART. IV. It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the aforementioned canal shall affect the general principles of neutralization or the obligation of the high contracting parties under the present treaty.

Those articles contain all the material provisions of the Hay-Pauncefote treaty.

The declaration in the preamble of the Hay-Pauncefote treaty that it is not intended to impair the general principle of neutralization established by Article VIII of the Clayton-Bulwer convention has been urged against any proposition to favor American ships at the canal.

The argument is based on the assumption that the terms "general principle of neutralization" used in the preamble include traffic conditions within their scope and meaning. But the assumption is not justified. They mean immunity from attack and nothing else. It is true the article in question does provide that the canal shall be open to the citizens and subjects of the United States and Great Britain on equal terms, but that was simply a statement of the consideration to each of the two contracting parties for the protection they were to extend to the canal. There are two separate elements expressed in the article—one, the protection of the canal, and the other the equality of treatment of the contracting parties in return for that protection.

The general principle which the parties desired to extend to the Panama route was one of protection, that is to say, neutralization. That proposition is expressed in the first sentence of the article. The equality of treatment of the contracting parties is another thought expressing the consideration in return for the protection of the canal, and is found in the second sentence of the same article. The term "neutralization" is not employed by international law writers to mean equality of treatment in respect to traffic conditions. The evident purpose of the Hay-Pauncefote treaty was to secure immunity from attack for the canal. No other meaning can be given to the word "neutralization."

The language of Article II of the Hay-Pauncefote treaty is quite clear, and unless its terms are modified by some subsequent provisions of that treaty, it concedes to the United States the enjoyment of all of the rights incident to the construction of the canal as well as the exclusive right for the regulation and management of the same. Is there any provision in the treaty which modifies Article II? It will be noted that the provisions relating to neutrality provided for in the Clayton-Bulwer convention are announced therein by the United States and Great Britain jointly, while in the Hay-Pauncefote treaty the United States alone establishes the rules. The partnership arrangement existing between the two countries under the Clayton-Bulwer convention has terminated, and the rules for the neutralization of the canal under the later treaty were enacted by the United States and must be maintained by that Government alone. Those rules are to be observed by other nations, and not by the United States. If this statement is true, then the rule of equality does not apply to the United States.

Great Britain's contention is that rule 1 does apply to the United States, and that, in effect, would be reading into the rule the words "with the vessels of the United States," so that the language of the rule then would be as follows:

The canal shall be free and open to vessels of commerce and war of all nations observing these rules on terms of entire equality with the vessels of the United States.

We do not believe that any such construction can be given to rule 1 if read in the light of the other provisions of the treaty.

The language of Article II is very clear and affirmative:

The United States shall have and enjoy all the rights incident to the construction of the canal, as well as the exclusive right of providing for its regulation and management.

These words can not be limited or impaired by implication. It requires an express provision in the treaty to minimize their effect, and none such can be found therein.

The claim now advanced by Great Britain is confined to the subject of canal tolls, but with equal propriety it might include all benefits given to American vessels of war or commerce at the canal. The rule of equality is not limited to canal tolls, but relates to any discrimination in respect to the charges or conditions of traffic or otherwise, and includes vessels of war and vessels of commerce. Consequently, no favors could be shown to our warships in the use of dry docks, anchorage basins, pilotage, coaling privileges, commissaries, and

other conveniences at the canal without extending like privileges to foreign war vessels.

Those who denied our right to fortify the canal relied on the broad language of the rule to sustain their contention, and if England's claim in respect to tolls is correct it would seem that the objection made to our fortifying the canal would be equally well taken. If the rule of equality places American ships on the same basis with foreign ships, then our belligerent vessels will not be authorized to revictual or take any stores in the canal except when strictly necessary, and all the other rules restricting the use of the canal by belligerents will apply to us. However, that doctrine has not been admitted by the people of the United States, and for that matter, England has recognized our right to fortify the canal and to do anything necessary to protect it, and that carries with it an admission of a superior right in our warships to the use of the canal.

The British protest assumes that the Hay-Pauncefote treaty did not admit of the United States protecting the territory on which the canal was to be built because the United States was not then the owner of it. The protest overlooks the important fact that at that very time the United States was under treaty obligation with Colombia to maintain the neutrality of the Isthmus and to guarantee the sovereignty right of that country therein, and that treaty obligation was not diminished in any respect by the Hay-Pauncefote treaty. Again, when the Hay-Pauncefote treaty was first submitted to the Senate it contained a provision to prohibit the United States from fortifying the canal. The Senate rejected the provision, and England accepted the treaty with the provision eliminated. In discussing the elimination of that provision, Lord Lansdowne, in a memorandum dated August 3, 1901, used this language:

In my dispatch I pointed out the dangers of a construction in which one clause permitted the adoption of defensive measures while another prohibited the erection of fortifications. It is most important that no doubt should exist as to the intention of the contracting parties. As to this, I understand that by the omission of all reference to the matter of defense the United States desire to reserve the power to protect the canal at any time, when the United States may be at war, from destruction or damage at the hands of an enemy or enemies. On the other hand, I conclude that, with the above exception, there is no intention to derogate from the principles of neutrality laid down by the rules. As to the first of these propositions, I am not prepared to deny that contingencies may arise, when, not only from a national point of view, but in behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities.

It is also to be borne in mind that owing to the omission of the words under which this country became jointly bound to defend the neutrality of the canal, and the abrogation of the Clayton-Bulwer treaty, the obligations of Great Britain will be materially diminished.

Thus we see that the attempt to make the rules of neutrality applicable to the United States was without success. So that our right to fortify the canal may be said to be well established, and the right to fortify carries with it the further right to use the canal with our belligerent ships when necessary to prevent hostile fleets or armies from entering the canal. If ships of war and of commerce of other nations have an equal right with those of the United States in the matter of tolls it would be difficult for our Government to maintain that our belligerent ships have more rights in the canal than those of any other belligerent. Inasmuch as the burden of maintaining the neutrality of the canal is upon the United States alone it follows that our warships are not within the rule of equality laid down in rule 1, and that being so, it would be playing fast and loose with the rule to include our commercial vessels within its provisions and not do likewise with our vessels of war.

In discussing the belligerent rights of the United States at the canal, the British note of protest of November 14, 1912, says:

Now that the United States has become the practical sovereign of the canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

The writer of the protest does not seem to have had in mind the fact that the United States has been under treaty obligations since 1846 to protect the Isthmus and to maintain the neutrality of the transit across it, and that Lord Lansdowne, during the negotiations for the Hay-Pauncefote treaty, recognized, not only our right, but that it was our duty, to protect the canal. Were we so inclined, we might rest our case on the admission contained in the protest; that the acquisition by the United States of the territory over which the canal is being constructed was sufficient of itself to modify the treaty so as to accord belligerent rights to our warships. If the acquisition of the territory will thus benefit our war vessels, it is hard to conceive how equal favors to our vessels

of commerce are to be withheld under such circumstances. At least one distinguished American diplomat has maintained that the acquisition by the United States of the canal strip did change the treaty status so as to authorize the exemption of American merchant ships from the payment of tolls. No doubt, he will be pleased at discovering that Great Britain, in her protest, lends comfort to his views.

Viewed in the light of the circumstances and conditions attending the execution of the Hay-Pauncefote treaty, and construing rule 1 in connection with the other terms of the instrument, that rule simply amounts to what is known in treaties as "the most-favored-nation clause." In other words the rule means that the nations observing the rules of neutralization laid down in the treaty by the United States shall be preferred in the use of the canal without discrimination in favor of one of such nations as against the other.

It has been said that language substantially the same as that of rule 1 of the Hay-Pauncefote treaty is employed in the treaty of Washington between the United States and Great Britain relating to the Canadian and American canals and the use of the Great Lakes and the St. Lawrence River, and that discrimination in favor of the ships of either of the contracting parties is not allowed under the latter treaty. It is true that entire equality is observed in the treatment of vessels of the parties to the Washington treaty, but it is so because the treaty itself clearly and affirmatively prohibits a discrimination in favor of one of the parties as against the other. The statement that the language of the Washington treaty is substantially that of the Hay-Pauncefote treaty is incorrect. Article XXVII of the Washington treaty leaves nothing to inference, but expressly says that Great Britain will engage to urge upon the Canadian Government to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the United States engages that the subjects of Great Britain shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States, and engages to urge upon the State governments to secure to the subjects of Great Britain the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the high contracting parties, on terms of equality with the inhabitants of the United States.

Here we have unequivocal declarations that there shall be equality of treatment between the contracting parties. There is no such declaration in the Hay-Pauncefote treaty.

It has also been said that the rule of equality, as expressed in the Hay-Pauncefote treaty, is the same as that laid down in the Suez Canal convention. But again we say that the statement is not correct. Article I of the Suez convention reads as follows:

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war *without distinction of flag*.

The words "without distinction of flag," which I have underscored, make the meaning quite clear that all nations shall stand upon an equal footing. There is no such language in rule 1 of the Hay-Pauncefote treaty.

The correspondence between the United States and Great Britain leading up to the Hay-Pauncefote treaty throws much light on the subject. Rule 1 received the most serious consideration in the diplomatic negotiations preceding the adoption of the treaty, and that England's great solicitude was to secure for herself equal treatment with other nations appears from Lord Lansdowne's communication to Lord Pauncefote on October 23, 1901, on this subject, in which he said in part:

I informed the United States chargé d'affaires to-day that His Majesty's Government had given their careful attention to the various amendments which have been suggested in the draft of the interoceanic canal treaty, communicated by Mr. Hay to your Lordship on the 25th of April last, and that I was now in a position to inform him officially of our views.

Mr. Hay suggested that in Article III, Rule 1, we should substitute for the words "the canal shall be free and open to vessels of commerce and of war of all nations which shall agree to observe these rules, etc." the words "the canal shall be free and open to the vessels of commerce and of war of all nations observing these rules," and in the same clause, as a consequence of the amendment, substitute for the words "any nation so agreeing," the words "any such nation." His Majesty's Government were prepared to accept this amendment, which seemed to us equally efficacious for the purpose which we had in view, namely, that of *insuring that Great Britain should not be placed in a less advantageous position than any other power, while they stopped short of conferring upon other nations a contractual right to the use of the canal.* (The italics are mine.)

The reasonable inference to be drawn from the language of the English negotiator is that he was seeking to obtain the most-favored-nation clause for Great Britain and nothing more. We must bear in mind that the Clayton-Bulwer convention contained provisions prohibiting the contracting parties from—

Acquiring or holding, directly or indirectly, for the citizens or subjects of the one any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the subjects of the other.

The fact that no such language was employed or sought to be employed by Great Britain in the Hay-Pauncefote treaty is significant, and would seem to support the conclusion that she only desired equal treatment with other nations, especially as she had assumed no obligation in respect to the canal that would not be expected of the other nations using it, that is to say, that none of them would do any act in the canal unfriendly to the United States. That obligation rests upon all civilized nations at peace with us, without the necessity of a treaty.

But we need not leave our case here. It became necessary for the United States to enter into a treaty with the Republic of Panama to obtain the right of way across the Isthmus of Panama for the construction of the canal and political jurisdiction over the Canal Zone. In part consideration for the cession of the canal strip by the Republic of Panama, the United States agreed that the vessels of the Panaman Government should have free transportation over the canal at all times. This is a discrimination in favor of the vessels of Panama, inasmuch as no other nation has that privilege, but it is quite consistent with the most-favored-nation clause.

The concession to the vessels of Panama, it is said, was necessary in order to acquire a right of way over which to build the canal and, in consequence, the privilege granted to Panama was proper and did not militate against the proposition that the United States must treat the vessels of all nations on terms of entire equality with their own vessels. The argument would create the anomalous situation in which Panama occupied a position superior to all nations, including the United States. In addition, the argument begs the question entirely. If Great Britain's claim is correct, the United States could not have made any such concession to Panaman vessels without violating the Hay-Pauncefote treaty, and in order to keep within that treaty some other consideration would have had to be given to Panama in lieu of the exemption accorded to her ships.

But the concession to Panama is quite consistent with the most-favored-nation clause. That clause does not prevent the granting of a special privilege to another nation, provided a special consideration is given in return for the privilege. The most-favored-nation clause can not be understood to mean that a country should enjoy as a free gift that which is accorded to other nations for a full equivalent; that is to say, Great Britain, if she observes the rules of neutrality laid down in the Hay-Pauncefote treaty, shall enjoy the canal on an equal footing with all other nations observing those rules, but the rule would be unequal as to Panama if she were required to surrender the Canal Zone to the United States besides having to observe the rules of neutrality. Hence, Panama is entitled to a free canal for her vessels, because she has given a special consideration for the privilege which the other nations have not. This doctrine has been generally recognized, and especially by Great Britain.

The United States entered into a commercial treaty with the Hawaiian Islands in 1876, by the terms of which mutual trade concessions were made by the two Governments. At that time Great Britain and Hawaii had a treaty containing the most-favored-nation clause. The British Government admitted that—

as the advantages conceded to the United States by the Sandwich Islands are expressly stated to be given in consideration of and as an equivalent for certain reciprocal concessions on the part of the United States, Great Britain can not, as a matter of right, claim the same advantages for her trade under the strict letter of the treaty of 1851.

We do not find that Great Britain's consent was asked by the United States before the concession was made to Panaman vessels, nor does it appear that Great Britain made any protest. It is fair to assume that she recognized the right of the United States to extend the privilege of a free canal to Panaman vessels in return for the cession of the Canal Zone and jurisdiction over it to our Government. It would seem that England could not very well admit a right to the United States in this and yet contend for her present construction of

rule 1—that English ships and those of other nations observing the rules are entitled to use the canal on terms of entire equality with those of the United States.

It is true that Great Britain now protests against the exemption of Panama vessels, but this objection, coming as it does nine years after the making of the treaty, when the canal is almost completed, does not deserve serious consideration. The only purpose it can serve is that of demonstrating that England now recognizes that she can not concede our right to exempt Panaman vessels without surrendering her case.

We might pursue the most-favored-nation theory further. On January 9, 1909, the United States, Colombia, and Panama negotiated what was known as the tripartite agreement, by which the United States granted to Colombia the right to convey through the canal her troops, materials of war, and ships of war without paying any duty to the United States. The agreement was negotiated by our State Department with the executive departments of Colombia and Panama and was ratified by our Senate and the Assembly of Panama, but was rejected by the Congress of Colombia, and hence did not become effective. The exemption from the payment of duties at the canal in favor of Colombian vessels could have been made only upon the theory that rule 1 accords to England nothing more than most-favored-nation treatment. Although Great Britain protested against the exemption of Colombian ships, the protest does not seem to have been as insistent as the one she now presents. Notwithstanding the English protest made at the time, our State Department carried forward the agreement, our Senate ratified it, and it failed only because the Colombian Congress rejected it.

The issue now pending with England has had full consideration by the United States Government. Our State Department, in making the canal treaty with Panama and the tripartite agreement with Colombia and Panama, and the Senate in ratifying this convention, have demonstrated that the treaty-making power of the United States has not been in accord with the English view of the subject. And now the Congress of the United States has spoken out against Great Britain's claim and has enacted the Panama Canal act, by which American shipping and the vessels of the Government of Panama are favored at the canal.

We might still pursue the doctrine a little further—that the most-favored-nation clause does not preclude a Government from granting special concessions to other nations in return for special favors. Suppose the United States, with some other maritime power as an ally, were to engage in a war; would it be correct to say that we could not admit the belligerent ships of our ally into the canal on an equal footing with our vessels? The American people would hardly concede that, and it may well be doubted that Great Britain would admit it were she the ally.

The issue has been discussed in this paper as though the burden were upon the United States in the argument. As a matter of fact, the onus is on Great Britain to establish her contention. Great Britain, in effect, is claiming a servitude upon our property—the canal—and a limitation on our sovereignty. Her claim, if valid, means that we must tax our imports and exports and our coastwise trade passing through the canal equally with the trade of other countries using that waterway. That means a serious restriction upon the sovereign right of the United States to regulate their fiscal and economic policies as they may deem best. The restriction would amount to a limitation of our sovereignty as well as a servitude imposed upon our territory.

It is a well-established rule of international law that one sovereign can not claim a servitude on the territory of another except by compact, and—

If a dispute occurs between a territorial sovereign and a foreign power as to the extent or nature of rights enjoyed by the latter within the territory of the former, the presumption is against the foreign State, and upon it the burden lies of proving its claim beyond doubt or question.

In summing up the objections to the British claim, we might say that the commercial advantages which the United States has at the Isthmus came from the treaty with Colombia of 1846 and not from the Clayton-Bulwer convention or the Hay-Pauncefote treaty, and neither of these affected the rights so held by us; that the terms of the Hay-Pauncefote treaty, when properly construed, do not sustain it; that in abandoning the explicit language of the Clayton-Bulwer convention, which clearly prohibited a discrimination in favor of the United States, England lost her right to claim at this time equality with the

United States in the use of the canal for her vessels; that Lord Lansdowne's communication of October 23, 1901, to Lord Pauncefoot, already mentioned, tends to prove that England's only desire was to obtain equality of treatment with other powers for her vessels at the canal and nothing more; that the canal treaty with the Republic of Panama by which the vessels of the Republic are entitled to the free use of the canal, made without protest from Great Britain, is a strong circumstance in support of the proposition that rule 1 is nothing more than the most-favored-nation clause expressed in another form; and, lastly, Great Britain has not produced any sufficient proof to overcome the presumption arising against her from the circumstances just related; much less has she adduced any proof or argument to establish her claim beyond doubt or question.

Many of our citizens believe that the issue between Great Britain and the United States on the subject of canal tolls should be submitted to The Hague tribunal for determination under the provisions of the arbitration treaty between the two countries. This assumes that the question is a justiciable one. The treaty does not require all questions that may arise between the two countries to be submitted to The Hague. It does say that "differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the permanent court of arbitration, etc." But the same clause of the treaty contains a proviso modifying the rule so laid down to the effect that neither of the parties is bound to submit questions affecting its vital interests, its independence, its honor, or the interests of third parties.

We have seen that the issue does affect the vital interests as well as the independence of the United States, inasmuch as the English claim imposes a limitation upon our sovereignty and a servitude on our territory, so as to materially impair our right to freely adopt such economic and fiscal policies as we may deem best, and we are not at liberty to use our own with freedom. The question is a vital one and of the most serious importance to the people of the United States, because all of the maritime powers of the world are equally interested with England in obtaining a decision adverse to the United States. And yet we are expected to submit the issue to a tribunal that is controlled by these same maritime powers.

It has been said that if the United States refused to submit the question to The Hague, the arbitration treaty may as well be destroyed. The answer to that is: If the question does, in fact, affect our vital interests or our independence, then there is no authority for its submission to that tribunal. The proviso which excludes such questions from the jurisdiction of The Hague is just as binding on the parties as any other part of the treaty, and the necessity for its observance is accentuated when the question is one in which the powers controlling the court are vitally interested. I do not intend to reflect on The Hague tribunal, but am simply stating the facts. In this instance, the judges would also be parties at interest.

REFERENCE TO NEWSPAPER COMMENT AND RESOLUTIONS UPHOLDING RIGHT OF UNITED STATES TO CONTROL PANAMA CANAL.

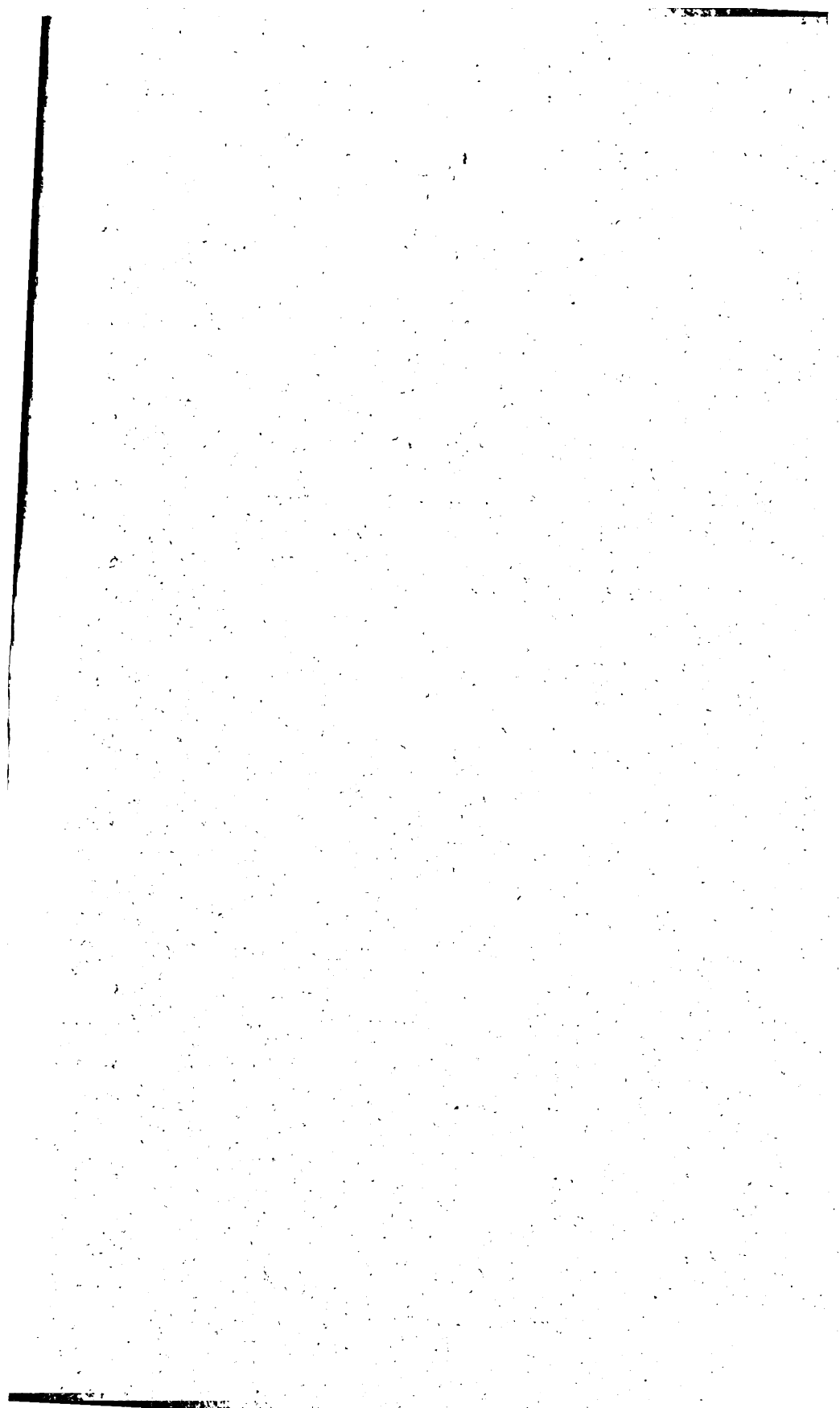
[From the Congressional Record, Mar. 4, 1913.]

Mr. KNOWLAND. Mr. Speaker, following the article are inserted comments from newspapers upholding the position of this Government in the canal controversy which have come to my notice since February 6. On that day I inserted in the Record similar newspaper comments and resolutions from every section of the United States, favoring the provision of the Panama Canal bill granting free tolls to American ships in the coastwise trade, which occupied nearly nine pages of the Record. These clippings show that there has been no change of public sentiment, regardless of the campaign now being waged by the transcontinental railroads to bring about the repeal of the free-toll section of the Panama Canal act.

[See Congressional Record, Feb. 6 and Mar. 4, 1913.]

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